

Agreement Reference Number: TfL / Co / 01792

Date: April 2010

**Temporary Worker
Preferred Supplier List (PSL) Framework Agreement**

between

Transport for London

and

***Morson Human Resources Limited
trading as Morson International***

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“Charges”	means the charges payable by the Client, in consideration of the due and proper performance of the Services under a Contract, as calculated in accordance with the rates set out in Schedule 6 as the same may be varied from time to time in accordance with Clause 8.3 ;
“Client”	means any member of the Group, including the Authority;
“Confidential Information”	means all information (whether written or oral) that by its nature may reasonably be regarded as confidential by a Party or, in the case of the Authority, any other member of the Group, whether commercial, financial, technical or otherwise including information which relates to the operations, business affairs, customers, Service Providers, products, software, telecommunications, networks, trade secrets, know-how or personnel of a Party or, in the case of the Authority, any other member of the Group;
“Contract”	means a binding agreement for the supply of Temporary Workers formed in accordance with Clause 2.3 ;
“Disaster”	means any unplanned interruption (whether of information processing facilities or systems or otherwise) which significantly impairs the ability of the Service Provider to perform the Services (in whole or in part) to the standard of the Service Levels and/or in accordance with the other terms of this Agreement or the relevant Contract;
“Disaster Recovery Plan”	means the Service Provider’s plan for its emergency response, back up procedures and business continuity in the event of a Disaster, details of which are set out in Schedule 9 ;
“Employment Business”	means an employment business as defined in the Employment Agencies Act 1973;
“Employment Claims and Liabilities”	means all losses, damages, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities (including without limitation any liability to tax and any liability to pay a redundancy payment, whether statutory or contractual), and expenses (including, without limitation, legal and other professional fees and expenses) in connection with employment or termination of employment;
“Exit Strategy”	means the exit plan set out in Schedule 11 for the orderly handover of the Services from the Service Provider to the Client or a replacement service provider to be implemented in the event of the termination or expiry of a Contract howsoever arising;
“Force Majeure Event”	means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes (in each case excluding the workforce of the Service Provider) to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“Affected Party”) to perform its obligations in accordance with the terms of this

Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

- “Functional Body”** means the Greater London Authority or any of its other functional bodies, currently, the London Development Agency, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority and Transport for London;
- “Group”** means the Authority and all of its subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time, together with Cross London Rail Links Limited (company number 04212657) and reference to any “member of the Group” shall refer to the Authority or any such subsidiary; and
- “Holding Company”** means any company which from time to time directly or indirectly controls the Service Provider where “control” is as defined by section 840 of the Income and Corporation Taxes Act 1988;
- “Industry Regulator”** means any statutory or non statutory body with responsibility for regulating (or promoting self regulation of) the provision of the type of services being offered by the Service Provider;
- “Insolvency Event”** means any of the following:
- (a) the Service Provider and/or the Holding Company making any voluntary arrangement with its creditors;
 - (b) a receiver, administrative receiver or manager, being appointed over all or part of the business of the Service Provider and/or the Holding Company;
 - (c) an administrator being appointed in respect of the Service Provider and/or the Holding Company of the Service Provider and/or the Holding Company becoming subject to an application for administration;
 - (d) being a company, the Service Provider and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
 - (e) the Service Provider and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;
 - (f) being an individual or firm, the Service Provider becoming bankrupt or dying; or
- any similar event to those in (a) to (f) above occurring in relation to the Service Provider and/or the Holding Company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”	means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
“Interest Rate”	means the rate of interest set out in Schedule 1 ;
“Introduction Fee”	means the fee payable under clause 16 calculated as set out in Schedule 6 ;
“London Living Wage”	means the basic hourly wage of £7.60 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Service Provider;
“Parties”	means the Authority and the Service Provider (including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
“Payment Terms”	means the payment procedure set out in Schedule 6 ;
“Premises”	means any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Group (including for the avoidance of doubt, the Authority);
“Recognised Ordering Procedure”	means the ordering procedure notified to the Service Provider by the Authority from time to time;
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly;
“Secondary Supplier”	means a second-tier agency or business with whom the Service Provider contracts for the supply of additional Temporary Workers;
“Service Levels”	means the standards of performance to which the Services are to be provided by the Service Provider to the Authority as set out in Schedule 5 and elsewhere in this Agreement as the same may be varied, added to or replaced from time to time by the written agreement of the Parties during the continuance in force of this Agreement;
“Service Provider’s Personnel”	means all such employees, officers, suppliers, sub-contractors, Authorised Sub-contractors and agents of the Service Provider and including the Temporary Workers;
“Services”	means: <ul style="list-style-type: none"> (a) subject to Clause 36.6 all or any part of the

services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider under this Agreement as detailed in the Specification including any variations to such services and/or activities pursuant to **Clause 18**; and

- (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from this Agreement;

“Services Commencement Date” means the date for commencement of the Services as set out in each Contract;

“Services Manager” means the person named as such in **Schedule 1** or such other person as approved by the Authority from time to time;

“Special Conditions” means the Special Conditions set out in **Schedule 2**;

“Specification” means the specification and other requirements set out in **Schedule 4** for the Services;

“System” means the Authority’s hosted electronic recruitment system for managing the supply of Temporary Workers;

“Temporary Worker” means a person who is supplied by the Service Provider to the Client for the purpose of carrying out an Assignment;

“Temporary Worker Recruitment Manager” means the person notified to the Service Provider by the Authority from time to time;

“Temporary Worker Recruitment Team” means the Authority team managing the Temporary Worker recruitment process;

“Term” means the period during which this Agreement continues in force as set out in **Schedule 1**;

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“Transition Period” means the period specified in **Schedule 3**;

“Transition Plan” means the plan set out in **Schedule 3** for the orderly handover of the Services (including any preparatory works required to be carried out by the Service Provider) to the Service Provider or Replacement Service Provider during the Transition Period as approved by the Authority;

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;

1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;

1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or

instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;

- 1.4 a reference to any document other than as specified in **Clause 1.3** and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in this Agreement for ease of reference only and do not affect the interpretation or construction of this Agreement;
- 1.6 references to Clauses and Schedules and Appendices are, unless otherwise provided, references to clauses of, and Schedules and Appendices to, this Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules and Appendices, the Clauses prevail, except where:
 - 1.7.1 the conflicting part of the Schedule or Appendix is explicitly expressed to take precedence; or
 - 1.7.2 the conflict is with a provision in **Schedule 2**, in which case the provisions in **Schedule 2** shall prevail;
- 1.8 except as otherwise expressly provided in any Contract, and subject to **Clause 1.7**, if there is any inconsistency between any of these Clauses, the Schedules, any Contract or any other document referred to in or incorporated into this Agreement or any Contract, the order of priority for the purposes of construction is:
 - 1.8.1 these Clauses;
 - 1.8.2 the Schedules;
 - 1.8.3 the Appendices;
 - 1.8.4 each Contract;
 - 1.8.5 any other document referred to in or incorporated by reference into this Agreement or any Contract;
- 1.9 the Schedules and Appendices form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.10 the Special Conditions form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.11 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.12 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. **Framework Agreement**

- 2.1 The purpose of this Agreement is to:
 - 2.1.1 confirm the Services to be provided by the Service Provider;
 - 2.1.2 confirm the mechanism and procedures for ordering the Services, including:

- 2.1.2.1 a mechanism whereby the Client may enter into a Contract with the Service Provider;
 - 2.1.2.2 the framework for the Service Provider to administer each Contract; and
 - 2.1.3 set out the obligations of the Parties.
- 2.2 The Authority's requirements may vary and this Agreement shall not place the Authority under any obligation to procure the Services from the Service Provider at a particular time or at all or on any Client to procure any Services. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Authority or any Client from engaging any other organisations or persons to provide services similar to or the same as the Services.
- 2.3 Each Contract will be upon the terms and conditions set out in this Agreement, together with the information and any additional special conditions requested by the Authority to the exclusion of all other terms and conditions. Each Contract shall be formed when the Authority submits a notification to the Service Provider in accordance with **Clause 6.3**. Each Contract shall be a binding agreement on the Client and the Service Provider. No contract will come into existence until a notification is issued to the Service Provider by the Authority.
- 2.4 The Service Provider shall procure that the Services must not commence without a Contract being formed in accordance with **Clause 2.3** and that the terms of the Contract are complied with. All Charges in respect of a Contract shall be set out in the relevant Contract and shall not exceed the rates set out in **Schedule 6**.
- 3. **Commencement and Duration**
- 3.1 This Agreement (but not a Contract) commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 3.2 Each Contract shall commence on the Services Commencement Date and continue for the term set out in the relevant Contract. Unless stated otherwise in a Contract, the term of the Contract and the Services provided pursuant to a Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Contract.
- 3.3 A Contract may expire or be terminated in accordance with its terms or **Clause 36** but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Contract or this Agreement.
- 4. **The Services**
- 4.1 The Service Provider:
 - 4.1.1 shall provide or procure that the Services provided pursuant to each Contract are provided in accordance with this Agreement and the terms of the relevant Contract;
 - 4.1.2 acknowledges that it has sufficient information about the Client, the Specification and the Service Levels and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement and the terms of the relevant Contract;
 - 4.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement or the relevant Contract due to any

misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification, Service Levels or otherwise to this Agreement; and

- 4.1.4 shall comply with all lawful and/or reasonable directions of the Client relating to its performance of the Services.
- 4.1.5 comply at all times with all relevant statutes, laws, regulations and codes of practice from time to time in force and applicable to the Service Provider's business and operation and will ensure that it is aware of any forthcoming legislation which may affect its provision of the Services and take all reasonable steps to reduce the impact on any such changes on the Authority or Client.
- 4.2 Notwithstanding anything to the contrary in this Agreement or a Contract, the Service Provider acknowledges that the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or any relevant Contract.
- 4.3 The Service Provider shall provide the Services under each Contract:
 - 4.3.1 with all such due skill, care and diligence normally exercised by employment businesses providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
 - 4.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification; and
 - 4.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.
- 4.4 In entering into this Agreement, the Authority has relied upon the Service Provider's representation that it is an independent company, business or partnership carrying on a business on its own account and that it has the skills, experience and qualifications to enable it to perform the Services to the standards specified and required by the Authority.
- 4.5 Where reasonably requested to do so by another Functional Body, the Service Provider shall contract with such other Functional Body on the terms and conditions of this Agreement mutatis mutandis, save that the special conditions applicable to the relevant Functional Body shall apply. For the avoidance of doubt, the Authority shall not have any liability to the Service Provider in respect of any contract entered into by the Service Provider and another Functional Body pursuant to this Clause.
- 4.6 For the purpose of this Agreement and each Contract, the Service Provider shall be deemed to act as an Employment Business. The Service Provider shall at all times comply with the provisions of, and the obligations on an employment business under, the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- 4.7 The Service Provider shall not enter into any agreement with its suppliers, Temporary Workers or sub-contractors upon terms that conflict or may conflict with the terms of this Agreement or any relevant Contract.

5. **Temporary Workers**

- 5.1 The Service Provider shall supply Temporary Workers to the Client in accordance with the Recognised Ordering Procedure.
- 5.2 Prior to introducing a Temporary Worker to the Client, the Service Provider shall at its own cost:
 - 5.2.1 carry out the following verification checks:

- 5.2.1.1 an identity check to confirm the identity and status of the proposed Temporary Worker;
- 5.2.1.2 a work status check to confirm that the proposed Temporary Worker has all of the necessary administrative authorisations, including entry visas, residence permits and work permits for the United Kingdom;
- 5.2.1.3 such further checks and clearances as the Client may require, including criminal records and security clearance checks; and
- 5.2.1.4 review of the proposed Temporary Worker's previous work history for the Client and the Group. The Service Provider shall not supply any Temporary Workers that are prohibited under the Specification;
- 5.2.2 ensure and obtain written evidence that the proposed Temporary Worker has the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by any applicable law or professional body;
- 5.2.3 obtain two (2) written work related references obtained within the three (3) months prior to the Temporary Worker being put forward for the Assignment which have been confirmed and cleared and, insofar as possible, date back two (2) years or such other period as required by the Authority;
- 5.2.4 ensure that all Temporary Workers whose duties make it necessary pursuant to the Client's drugs and alcohol policies have a certificate of compliance and agree to comply with all applicable screening arrangements;
- 5.2.5 ensure that the proposed Temporary Worker has:
 - 5.2.5.1 completed and passed a Pre-Employment Questionnaire; and
 - 5.2.5.2 taken and passed a medical assessment, where deemed necessary by the Authority; and
- 5.2.6 ensure that all other requirements of the Specification with regard to checks on the Temporary Worker are met.
- 5.3 The Service Provider shall ensure that the Temporary Workers:
 - 5.3.1 comply at all times with all relevant statutes, laws, regulations and codes of practice from time to time in force and applicable to the Client's business and operation;
 - 5.3.2 are informed of and comply with the Client's working practices and requirements, including policies usually supplied to the Client's employees relating to health and safety, security, business and operational ethics, drugs and alcohol and personal conduct and any other on site regulations specified by the Client for personnel working at the Premises or accessing any computer systems, including policies for email and internet use;
 - 5.3.3 agree to, and comply with the Employment Business Code of Conduct;
 - 5.3.4 perform their Assignment with all due skill, care and diligence and in accordance with good industry practices and at all times in an honest and professional manner;

- 5.3.5 are properly briefed about their Assignment and advised of the correct address and times for attendance to work and the relevant department and contact at the Client, including the appropriate reporting lines, their duties, expected length of an Assignment, pay rates and any required safety equipment; and
- 5.3.6 shall, if required, enter into a confidentiality agreement with the Service Provider on terms and in a form acceptable to the Client.
- 5.4 The Service Provider shall:
- 5.4.1 observe all reasonable directions and instructions given by the Client in relation to the finding, evaluation and selection of Temporary Workers; and
- 5.4.2 be available to the Client upon reasonable request for the purposes of consultation and advice relating to the Services and the Temporary Workers from time to time.
- 5.5 The Service Provider shall, and shall procure that all Authorised Sub-contractors shall, at all times comply with the provisions of **Schedule 8** regarding Diversity, Equality and Employment.
- 5.6 The Service Provider acknowledges, and undertakes to inform the Temporary Workers, that the Client reserves the right from time to time to:
- 5.6.1 intercept, for the purposes of monitoring, modifying and interfering with and/or recording, any communication made through any system capable of transmitting communications including telephone, electronic mail, facsimile, voicemail or internet facility provided by that Client; and
- 5.6.2 use any information obtained as a result of any intercepted communications referred to in **Clause 5.6.1** for the purposes contemplated in the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.
- 5.7 The Client reserves the right to change the criteria for Temporary Workers as notified to the Service Provider or as otherwise set out in this **Clause 5** in line with any changes in applicable legislation, regulations or codes of practice from time to time at no cost to the Client.
- 6. Ordering Procedure**
- 6.1 During the Term of this Agreement, the Client may in its discretion notify the Service Provider of its requirements for Temporary Workers including any additional information that the Client considers necessary to enable the Service Provider to supply Temporary Workers in accordance with this Agreement. The Service Provider will only process requests submitted in accordance with the Authority's Recognised Ordering Procedure.
- 6.2 Subject to **Clause 6.1**, the Service Provider shall provide the Client with its proposal for potential Temporary Workers including all relevant information about the proposed candidates. The Service Provider shall ensure that all proposed Temporary Workers match the requirements set out by the Client. The Service Provider shall, where so requested by the Client, supply to the Client a curriculum vitae for each potential Temporary Worker and/or test the Temporary Workers and/or facilitate discussions by or on behalf the Client with such of those candidates as the Client considers potentially suitable. The Service Provider shall make available to the Client the results of any such test or discussions.
- 6.3 In the event that the Client is satisfied with one or more of the Service Provider's proposed Temporary Workers, it shall notify the Service Provider using the Recognised Ordering Procedure, listing the candidates it wishes to use as Temporary Workers, together with the agreed Charges for such Temporary Workers, the Assignment, the Services

Commencement Date and any other relevant details, at which point a Contract shall be formed in accordance with **Clause 2.3**. The notification shall be the Service Provider's authorisation to supply the Temporary Workers to the Client.

6.4 Notwithstanding any other provision of this Agreement or the relevant Contract, the Service Provider shall perform its obligations under the Contract in accordance with the response times set out in the Specification.

6.5 The Service Provider shall immediately notify the Client if the Service Provider is at any time unable to supply Temporary Workers requested by the Authority pursuant to **Clause 6.1**. Nothing in this **Clause 6.5** shall relieve the Service Provider of its obligations under this Agreement or the relevant Contract or otherwise prejudice the rights and remedies of the Client.

6.6 The Service Provider shall not (and does not have any authority to) enter into a contract with a Temporary Worker on behalf of the Client or in the Client's name.

6.7 For the avoidance of doubt, any recruitment process applied to the selection of permanent employees is distinct from and exclusive to this **Clause 6**.

7. **Secondary Suppliers**

7.1 The Service Provider shall provide suitable Temporary Workers from its own resources and, subject to **clause 7.2**, is prohibited from using Secondary Suppliers.

7.2 If the Service Provider considers that it is necessary to use a Secondary Supplier in order for it to provide the Services it shall be entitled to request consent to do so from the Temporary Worker Recruitment Team. Such consent will only be given in exceptional circumstances and will be subject to the provisions of **clause 7.3**.

7.3 Any Secondary Supplier approved under **clause 7.2** will be deemed an Authorised Sub-contractor for the purposes of this Agreement and the Service Provider shall remain solely responsible and liable to the Client for any breach of this Agreement or the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider.

8. **Charges**

8.1 The Service Provider shall invoice the Client in accordance with the procedures set out in **Clause 9** and in consideration of, and subject to the due performance of the Services by the Service Provider, the Client shall pay the Service Provider the Charges in accordance with those procedures and any other terms and conditions of the Contract.

8.2 The Service Provider shall not be entitled to reimbursement for expenses (including any expenses of the Temporary Workers).

8.3 The Charges may only be varied in accordance with **clause 18** and **Schedule 6**.

8.4 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

9. **Payment Procedures and Approvals**

9.1 The Service Provider shall invoice the relevant Client in respect of the Charges in accordance with the Payment Terms.

9.2 No payment by the Client or any act or omission or approval by the Client shall

- 9.2.1 indicate or be taken to indicate the Client's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Client may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under this Agreement or a Contract; or
- 9.2.2 prevent the Client from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to **Clause 27**, the Client shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Client may recover such amount as a debt under this Agreement or a Contract.
- 9.3 If any sum payable by the Client under the Contract is not paid when properly due then the Service Provider shall be entitled to recover interest on that sum from the due date until payment is made in full, both before and after any judgment, at the Interest Rate. The Parties agree that this **Clause 9.3** is a substantial remedy for late payment of any sum payable under each Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider is not entitled to suspend or delay performance of the Services as a result of any sums being outstanding.

10. **Remuneration of Temporary Workers**

- 10.1 The Service Provider shall pay, or shall procure that any Authorised Sub-contractor pays, each Temporary Worker for the performance of an Assignment, including without limitation, the payment of any fees or hourly rates and any other payments and disbursements to which the Temporary Worker is entitled to, including but not limited to any holiday pay and any sick pay.
- 10.2 The Service Provider shall, or shall procure that any Authorised Sub-contractor) shall:
- 10.2.1 make deductions and accounts to HM Revenue & Customs for PAYE income tax and any other tax due in respect of the remuneration of each Temporary Worker; and
- 10.2.2 make deductions and account for all necessary National Insurance contributions relevant to the remuneration of each Temporary Worker.
- 10.3 Upon request, the Service Provider shall inform the Client of the rate that the Service Provider, or any Authorised Sub-contractor, is paying to the Temporary Worker. The Service Provider shall provide, or procure the provision of, such additional evidence to allow the Authority to verify the rates paid to Temporary Workers as the Authority may reasonable request.
- 10.4 The Service Provider shall not, and shall procure that any Authorised Sub-contractors shall not, withhold any payment due to a Temporary Worker because of any failure by the Client to pay the Service Provider.
- 10.5 For the avoidance of doubt, the Client shall have no liability to any Authorised Sub-contractor arising out of or in connection with the supply of Temporary Workers, including in respect of payments due to any Authorised Sub-contractor.

11. **London Living Wage**

- 11.1 Without prejudice to any other provision of this Agreement the Service Provider shall:
- 11.1.1 ensure that none of its employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage (unless otherwise directed by TfL);

- 11.1.2 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;
 - 11.1.3 provide to the Authority such information concerning the London Living Wage and as the Authority or its nominees may reasonably require from time to time; and
 - 11.1.4 disseminate on behalf of the Authority to its employees engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires.
 - 11.1.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage
- 11.2 Any breach by the Service Provider of the provisions of this **Clause 11** shall be treated as a material breach capable of remedy in accordance with **Clause 36.2.1**.

12. Warranties and Obligations

12.1 Without prejudice to any other warranties or obligations expressed elsewhere in this Agreement or the Contract or implied by law, the Service Provider warrants, represents and undertakes to the Authority and the Client that:

- 12.1.1 the Service Provider:
 - 12.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its holding company as defined in section 736 of the Companies Act 1985) to enter into and to perform the Contract; and
 - 12.1.1.2 the Temporary Workers have full capacity to perform their Assignments and all necessary authorisations, licences and permits to work in the United Kingdom and perform their Assignments;
 - 12.1.1.3 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and
 - 12.1.1.4 has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the standard of performance specified in the Service Levels, this Agreement and the Contract;
 - 12.1.1.5 is entering into this Agreement and will enter into each Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and each Contract;
 - 12.1.1.6 shall at all times employ or engage through the authorised Authorised Sub-contractors sufficient numbers of trained, skilled and competent Temporary Workers to ensure that it can fulfil orders placed by the Client and that it has sufficient resources of

such Temporary Workers to cover absences, including holidays or illness;

- 12.1.2 all information contained in the Service Provider's tender for the Services is and remains true, accurate and not misleading, save as may have been specifically disclosed to and acknowledged in writing by the Authority prior to the execution of this Agreement;
 - 12.1.3 all information provided to the Authority in respect of each Temporary Worker shall be true, complete and accurate in all material respects;
 - 12.1.4 it is of sound financial standing and the Service Provider is not aware of any circumstances prior to the Agreement Commencement Date which may adversely affect such financial standing in the future;
 - 12.1.5 the status of each Authorised Sub-contractor through which any individual provides their services is true and accurate;
 - 12.1.6 it has taken and shall continue to take all steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or Trojan horse) into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Client;
 - 12.1.7 it has obtained or has made arrangements to ensure that it will obtain all necessary registrations, consents, licences, approvals and permissions to enable it to carry out the Services and will throughout the Term (and the term of any Contract) obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services;
 - 12.1.8 without prejudice to **Clause 12.1.5**, it has and shall maintain throughout the Term (and the term of any Contract) all necessary permits, licences and permissions required by any Regulatory Bodies and/or Industry Regulators; and
 - 12.1.9 this Agreement is and each Contract will be executed by a duly authorised representative of the Service Provider.
- 12.2 Each warranty and obligation in this **Clause 12** shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement or the Contract.
- 12.3 The Service Provider shall remedy any breach of the warranties or obligations in this **Clause 12** in accordance with **Clause 36.3**. Any failure to remedy the breach shall be deemed to be a material breach not capable of remedy and shall entitle the Authority to terminate the Contract in accordance with **Clause 36.2**.
13. **Contract Management**
- 13.1 The Authority authorises the Temporary Worker Recruitment Manager to act as the Authority's representative for all purposes of this Agreement and the Service Provider shall deal with the Temporary Worker Recruitment Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The Authority will nominate a Temporary Worker Recruitment Manager in respect of each Contract in relation to matters arising under a Contract, unless the Service Provider is otherwise notified by the Authority.
- 13.2 The Services Manager shall act as the Service Provider's representative for all purposes of this Agreement. The Service Provider shall ensure that the Services Manager:

- 13.2.1 diligently supervises the performance of the Services;
 - 13.2.2 attends all contract meetings with the Client (the location, frequency and time of which shall be specified by the Temporary Worker Recruitment Manager from time to time); and
 - 13.2.3 is available to the Client to resolve any issues arising in connection with this Agreement or Contract at such time periods as are specified in the relevant Contract.
- 13.3 The Service Provider may only make changes to the Services Manager (except in the event of sickness, incapacity or resignation) with the prior written consent of the Authority (which shall not be unreasonably withheld).
- 13.4 No act of or omission by or approval from either the Authority or the Temporary Worker Recruitment Manager in performing any of their respective duties under or in connection with this Agreement or the relevant Contract shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement and relevant Contract.
- 14. Service Levels**
- 14.1 The Service Provider shall provide the Services in accordance with the Service Levels and shall ensure that it maintains the requisite technical, operational and specialist abilities and capacity to provide the Services in accordance with the Agreement and the Client's requests for Temporary Workers from time to time.
- 14.2 The Service Provider's performance against the Service Levels will be automatically monitored by the System. Subject to the provisions of **Clause 14.4** If at any time three or more of the Service Levels are at a red warning level, then without prejudice to the Client's other rights and remedies under the Agreement or otherwise, the Client will:
- 14.2.1 notify the Service Provider and require it to attend performance management meetings and/or to provide the reason for the failure to achieve the Service Levels and its proposed method of remedy;
 - 14.2.2 remedy such failure (provided the failure in question is remediable) to the reasonable satisfaction of the Client within a timescale set by the Client; and
 - 14.2.3 use reasonable endeavours to ensure that such a failure to achieve the Service Levels or failure to carry out its obligations under or in connection with the Agreement is not repeated during the continuance in force of the Agreement.
- 14.3 In the event that the remedial procedure in **clause 14.2** has been implemented the Agreement and any current Contract will continue except where there is another instance of three or more Service Levels at red level in which case the Client reserves the right to terminate the Agreement and any current Contract without notice.
- 14.4 Notwithstanding the provisions of **Clauses 14.2** and **14.3** in respect of the Service Levels which are deemed to be at a red level where there is a single failure to meet them (as set out in **Schedule 5 section 2**) the Authority reserves the right to terminate the Agreement and any Contract without notice and not follow the remedial process in this **Clause 14**.
- 15. Replacement of Temporary Workers**
- 15.1 Without prejudice to any other rights and remedies of the Client, if:
- 15.1.1 the Client, in its absolute discretion, decides that a Temporary Worker is unsatisfactory to perform an Assignment; or

- 15.1.2 a Temporary Worker is not acting in accordance with the terms of the Contract, the Assignment or the requirements of the Client,
- in each case an “Unsuitable Temporary”, then the Client shall notify the Service Provider of that fact detailing the grounds of its dissatisfaction with the Unsuitable Temporary and requiring the Service Provider to provide a suitable replacement.
- 15.2 In the event that a replacement is required under **Clause 15.1** the Service Provide must remove the Temporary Worker and provide a replacement for the Client in the following timescales:
- 15.2.1 immediately, if the Temporary Worker is in their first seven days of the Assignment; and
- 15.2.2 within seven days if the Temporary Worker has been working on the Assignment for seven days or more.
- 15.3 The Service Provider is responsible for the re-deployment or discipline of any Unsuitable Temporary in accordance with all applicable statutory procedures and shall indemnify and keep the Authority and each member of the Group indemnified in respect of any claims arising out of or in connection with the re-deployment or discipline of an Unsuitable Temporary.
- 15.4 Without prejudice to the Client’s other rights and remedies under the Contract or otherwise, the Service Provider shall within the notice period referred to in **Clause 15.2** either:
- 15.4.1 provide a suitable replacement for the Unsuitable Temporary (at the same or a lower cost as the Unsuitable Temporary) at no additional cost to the Client; or
- 15.4.2 if no such suitable replacement is available, inform the Client in writing of that fact, in which case the Client:
- 15.4.2.1 shall not be charged for, or shall be entitled to a pro rata refund of all fees paid in relation to the Unsuitable Temporary; and
- 15.4.2.2 shall have no further liability in relation to the Unsuitable Temporary.
- 15.5 If more than one Unsuitable Temporary is placed on a particular Assignment, the Client shall (in its absolute discretion and without prejudice to the Client’s other rights and remedies under the Agreement, a Contract or otherwise) be entitled to terminate such Assignment with immediate effect without liability to the Service Provider, save for payment for the supply of suitable Temporary Workers to the date of termination of the Assignment provided that such Temporary Workers have performed in accordance with the terms of the Contract and the Client’s requirements.
- 15.6 If a Temporary Worker becomes unavailable by reason of illness or injury or otherwise during the period of their Assignment to the Client, then without prejudice to the Client’s other rights and remedies under the Agreement, a Contract or otherwise the Service Provider, as soon as it becomes aware of such unavailability, shall immediately inform and keep so informed the Client’s Temporary Worker Recruitment Manager and shall, if required by the Client, provide an equivalent replacement Temporary Worker, having first obtained the Temporary Worker Recruitment Manager’s written consent to the new Temporary Worker.
- 15.7 Subject to **Clauses 15.6 and 17.2.1**, the Service Provider agrees not to remove any Temporary Worker from providing services to the Client until and unless:

- 15.7.1 for whatever reason, the Temporary Worker Recruitment Manager requests a replacement Temporary Worker and provides prior written approval of the replacement Temporary Worker; or
- 15.7.2 for whatever reason, the Client no longer needs the services of the Temporary Worker.
- 15.8 The Service Provider shall immediately notify the Client if any of the information provided to the Client by the Service Provider in respect of a Temporary Worker is or becomes incorrect or inaccurate. Where the Client considers, in its absolute discretion, that the inaccuracy means the Temporary Worker is unsuitable to perform the Assignment in accordance with the terms of the Contract and the Client's requirements, the Service Provider shall provide an equivalent replacement Temporary Worker, having first obtained the Temporary Worker Recruitment Manager's written consent to the new Temporary Worker.
- 16. Recruitment of Temporary Workers**
- 16.1 Subject to **Clause 16.2**, if the Client employs in its direct employment a Temporary Worker supplied by the Service Provider within the time period specified in **Schedule 6** the Client shall pay an Introduction Fee.
- 16.2 If a Temporary Worker has been introduced to the Client for a permanent position by a person other than the Service Provider, the Client shall not be obliged to pay to the Service Provider any Introduction Fee in respect of the employment of such Temporary Worker.
- 16.3 The Service Provider shall invoice the Client for any Introduction Fee due to the Service Provider no earlier than one (1) month after the commencement of direct employment of the Temporary Worker in accordance with the payment terms in **Schedule 6**.
- 16.4 If the direct employment of a Temporary Worker is terminated by the Client or the Temporary Worker leaves such employment under its own volition, the Service Provider shall refund the Client the amount of the Introduction Fee in accordance with **Schedule 6**.
- 16.5 The Service Provider shall not solicit any of the Client's employees with the aim of deploying them as Temporary Workers for the purpose of the Contract or any other contract (including any contract with a Functional Body) or otherwise deploying them in work for the Authority or any other Functional Body.
- 16.6 For the avoidance of doubt, no fee shall be payable by the Client in the event that a Temporary Worker chooses to cease working for the Service Provider and to work for another agent or agency on the Client's or any other Functional Body's work (either during the currency of the Contract or on termination or expiry of the Contract).
- 17. Employment Status**
- 17.1 The Parties hereby record their express intention that the Temporary Workers are the employees of the Service Provider or the employees of Authorised Sub-contractor or are individuals retained by the Service Provider or the Authorised Sub-contractor on contracts for services and the Service Provider warrants and undertakes that it will not do anything, and that it shall procure that the sub-contractors shall not do anything, or allow to occur any event or circumstance that might lead to a Temporary Worker having any claim to being, or entitlement to become, an employee of the Authority or any Client.
- 17.2 Further to, but without prejudice to the generality of, **Clause 17.1**, the Service Provider shall:
- 17.2.1 ensure that no Temporary Worker is assigned to the Client (whether pursuant to one or more Contracts) for a continuous period of more than 11 months unless the Client has expressly instructed the Service Provider in writing that it wishes to retain the services of such Temporary Worker;

- 17.2.2 maintain a level of communication with and supervision and control over the Temporary Workers that is appropriate;
 - 17.2.3 make all Temporary Workers aware of the requirements of **Clause 16.5** and of the restrictions on the civil service offering employment to any person without carrying out a fair and open competition (under the Civil Service Order in Council 1995); and
 - 17.2.4 be responsible for all employment related costs, including redundancy costs and other costs associated with the Temporary Workers.
- 17.3 The provisions of **Schedule 7** shall apply on the commencement and termination of the Contract and the Parties agree to comply with their respective obligations thereunder.
- 17.4 Nothing in this Agreement or a Contract will render the Temporary Workers or any Authorised Sub-contractor, an employee, agent or partner of the Authority or the Client by virtue of the supply of Temporary Workers or the provision of the Services under the Contract.
- 18. Changes to the Services**
- 18.1 At any time during the Term, the Client may request and the Service Provider may recommend changes to any part or parts of the Services (“Change Request”).
- 18.2 Within five (5) Business Days (or such longer period as may be agreed) of receipt of a Change Request, the Service Provider shall notify the Client in writing of any time required to investigate the effect upon this Agreement or the Contract of implementing such Change Request. If the Client instructs the Service Provider to proceed with such investigation, the parties will follow the procedure set out in the remaining provisions of this Clause. For the avoidance of doubt, the Service Provider will not be entitled to any fees or expenses for investigating the effect of implementing such Change Request.
- 18.3 Notwithstanding **Clause 18.2**, the Service Provider will submit to the Client as soon as reasonably practicable a full written quotation for such Change Request specifying the increase or decrease (if any) which will be required to the Charges and the changes (if any) which will be required to this Agreement or the Contract, together with such other information as the Client may reasonably request.
- 18.4 Upon receipt of such quotation, the Client may elect either to:
- 18.4.1 request such amendments to the change to which such quotation relates as it may require, in which case the Service Provider will amend the quotation accordingly (including any consequential amendment to the Charges) and will resubmit such amended quotation to the Client in accordance with **Clause 18.3**; or
 - 18.4.2 accept such quotation, in which case this Agreement or the Contract, as appropriate, will be amended accordingly; or
 - 18.4.3 withdraw the proposed change, in which case this Agreement and the Contract will continue in force unchanged.
- 18.5 Until such time as any change is formally agreed between the parties in accordance with this Clause, the Service Provider shall, unless otherwise agreed in writing, continue to perform and be paid as if such change had not been requested or recommended. For the avoidance of doubt, the Service Provider agrees that any investigation under **Clause 18.2** or the preparation of a quotation under **Clause 18.3** will not cause any delay in the provision of the Services.

- 18.6 No change made necessary directly or indirectly by any default, defect, act or omission of the Service Provider will constitute a formal change under this Clause or will justify an increase in the Charges or vary any programme or schedule of the Services.
- 18.7 No change made necessary directly or indirectly by any change in legislation will constitute a formal change under this **Clause 18** or will justify an increase in the Charges.
19. **Conflict of Interest**
- 19.1 The Service Provider warrants that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or the Authority, save to the extent fully disclosed to and approved by the Authority.
- 19.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the duration of this Agreement and in any event not less than once in every six months and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or Authority and shall work with the Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Authority's satisfaction, provided that, where the Authority is not so satisfied, it may terminate this Agreement and all Contracts immediately upon giving notice to the Service Provider.
20. **Access to Premises**
- 20.1 Subject to **Clause 20.4** any access to the Premises made available to the Service Provider in connection with the proper performance of a Contract shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services during the term of a Contract. The Service Provider shall:
- 20.1.1 have the use of such Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Premises;
- 20.1.2 vacate the Premises upon the termination or expiry of the relevant Contract or at such earlier date as the Client may determine;
- 20.1.3 not exercise or purport to exercise any rights in respect of the Premises in excess of those granted under **Clause 20.1**;
- 20.1.4 ensure that the Service Provider's Personnel carry any identity passes issued to them by the Client at all relevant times and comply with the Client's security procedures as may be notified by the Client from time to time; and
- 20.1.5 not damage the Premises or any assets or equipment on the Premises or any assets or equipment of the Client.
- 20.2 Nothing in this **Clause 20** shall create or be deemed to create the relationship of landlord and tenant in respect of the Premises between the Service Provider and the Client.
- 20.3 The Client shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider except as may be specified in any Contract.
- 20.4 Without prejudice to any of the Client's other rights, powers or remedies, the Client may (without liability to the Service Provider) deny access to any Service Provider's Personnel to, or remove any of the Service Provider's Personnel from, the Premises if such Service Provider's Personnel in the Client's view does not comply with the Client's requirements or has not been properly verified in accordance with the Client's applicable security policy or trained in any way required by a relevant Contract and/or is otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall

notify the Service Provider of such denial or removal in writing; the Service Provider shall immediately remove such Service Provider's Personnel from performing the Services and provide a suitable replacement.

21. **Compliance with Policies and Law**

21.1 The Service Provider, at no additional cost to the Authority:

21.1.1 undertakes to procure that all the Service Provider's Personnel comply with all of the Authority's policies and standards that are relevant to the performance of the Services as notified to the Service Provider by the Authority including those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Authority for personnel working at the Premises or accessing the Authority's computer systems. The Authority shall provide the Service Provider with copies of such policies and standards on request;

21.1.2 shall provide the Services, and ensure that the Service Provider's Personnel act, in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Service Provider's business and/or the Client's business or operations, from time to time in force which are or may become applicable to the Services. The Service Provider shall promptly notify the Client if the Service Provider is required to make any change to the Services for the purposes of complying with its obligations under this **Clause 21.1.2**;

21.1.3 without limiting the generality of **Clause 21.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities and shall procure the observance of the provisions of this sub-clause by any Authorised Sub-contractors;

21.1.4 acknowledges that the Authority is under a duty under section 71 of the Race Relations Act 1976 and under section 49A of the Disability Discrimination Act 1995 to have due regard to the need to eliminate unlawful discrimination on the grounds of race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In providing the Services, the Service Provider shall assist and co-operate with the Authority where possible in satisfying this duty;

21.1.5 acknowledges that the Authority is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

21.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;

21.1.5.2 eliminate unlawful discrimination; and

21.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in providing the Services, the Service Provider shall assist and co-operate, and shall procure that all Temporary Workers co-operate, with the Authority where possible to enable them to satisfy their duty;

21.1.6 shall promptly notify the Service Provider's Personnel and the Client of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this **Clause 21.1** shall be borne by the Service Provider.

21.2 The Service Provider shall comply with Authority's workplace harassment policy as updated from time to time (copies of which are available on request from the Authority) and with the Authority's Code of Conduct (which is available on Authority's website, www.tfl.gov.uk).

21.3 In providing the Services, the Service Provider shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:

21.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

21.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;

21.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

21.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

22. **Corrupt Gifts and Payment of Commission**

The Service Provider shall not, and shall ensure that its employees, agents, and Authorised Sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agents of the Authority or any member of the Group nor favour any employee, officer or Service Provider of the Authority or any member of the Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Authority or any member of the Group other than as a representative of the Authority, without the Authority's prior written approval.

23. **Quality and Best Value**

The Service Provider acknowledges that Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness, as such, the Service Provider shall, where reasonably requested by the Authority, participate in any relevant best value review.

24. **Management Information**

24.1 The Service Provider shall throughout the Term (and thereafter in respect of any extant Contract) provide to the Authority management information and reports (in a format and within the timescales set by the Authority) in respect of the Services as requested by the Authority from time to time.

24.2 The Service Provider shall maintain "Records" (as defined at **Clause 25.1.1**) of all Contracts entered into by the Service Provider and the Client. Such Records shall enable the Service Provider to track all requests and Contracts and ascertain their status at any time.

24.3 The Service Provider will maintain a comprehensive, accurate and up to date database of Temporary Workers including job/role descriptions, employment terms, benefits, and all such information in respect of the Temporary Workers as shall reasonably be requested by the Client.

24.4 The Service Provider shall make this information available to the Authority at the Authority's request (the Authority giving the Service Provider thirty (30) days notice) and shall provide all information and assistance regarding Temporary Workers as the Authority may reasonably require on thirty (30) days notice to enable the Authority to maintain adequate visibility of the continuity, quality and performance of the Services, and (if required) to ensure a smooth transition and transfer to a Replacement Service Provider.

24.5 The Service Provider shall implement a system to monitor the quality of Temporary Workers provided to the Authority and to facilitate feedback.

25. **Records, Audit and Inspection**

25.1 The Service Provider shall:

25.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under this Agreement and the relevant Contract and all transactions entered into by the Service Provider for the purposes of this Agreement (including time-sheets for the Temporary Workers) ("Records");

25.1.2 retain all Records during the Term (and for the duration of a Contract) and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement or a Contract ("Retention Period").

25.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services and the Service Provider shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for consultation, including Records and staff of the Authorised Sub-contractors.

25.3 The Service Provider shall ensure it is and remains "Link-up" accredited to supply Temporary Workers for the duration of the Agreement under the appropriate categories. Loss of accreditation may result in suspension of any current and new Assignments until such time that the accreditation is regained.

26. **Set-Off**

The Client will be entitled but not obliged at any time or times to set off any liability of the Service Provider to the Client against any liability of the Client to the Service Provider.

27. **Indemnity**

27.1 The Service Provider shall indemnify, keep indemnified and hold harmless the Authority or the Client from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct loss, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Authority or the Client incurs or suffers as a result of any acts or omissions of the Service Provider, its employees, agents or subcontractors.

27.2 The Service Provider is not responsible for and shall not indemnify the Authority or the Client for any losses to the extent that such losses are caused by any breach or negligent performance by the Authority or the Client of any of its obligations under this Agreement.

27.3 If any person engaged by the Service Provider or any Authorised Sub-contractor claims in the provision of Services to the Authority or any member of the Group to be employed by the Authority or a member of the Group then the:

- 27.3.1 Authority or the relevant member of the Group shall notify the Service Provider as soon as it or they become aware of such claim; and
- 27.3.2 Authority or the relevant member of the Group may terminate the Assignment of such person and the Service Provider will indemnify, keep indemnified and hold harmless the Authority and the Group member from and against all Employment Claims and Liabilities which the Authority or the Group member incurs or suffers in relation to such person arising out of or in connection with their employment and such termination or purported termination (including, for the avoidance of doubt, but without limitation, any redundancy payment, whether statutory or contractual) and against any sums payable to or in relation to such person in connection with any employment up to the date of termination provided such termination takes place within one (1) month of notification as referred to in **Clause 27.3.1**; and
- 27.3.3 Service Provider shall indemnify the Authority and each member of the Group from or against any Employment Claims and Liabilities which the Authority or any member of the Group incurs or suffers in relation to such person as a result of any act or omission of the Service Provider or any Authorised Sub-contractor.
- 27.4 Further to **Clause 27.3**, the Service Provider agrees to indemnify the Authority and the other members of the Group in respect of any claims that may be made by the relevant authorities against the Authority or any member of the Group in respect of VAT, income tax demands or penalties or national insurance or similar contributions in relation to the provision of the Services by the Service Provider.
- 28. Insurance**
- 28.1 The Service Provider will at its sole cost maintain employer's liability insurance cover as required by law (including cover for Temporary Workers engaged in safety critical work) and insurance cover in the amounts set out in **Schedule 1** in respect of the following to cover the Services (the "Insurances") and will ensure that the Authority's interest is noted on each and every policy:
- 28.1.1 public liability to cover injury and loss to third parties and
- 28.1.2 such other insurance cover as set out in **Schedule 1**.
- 28.2 The insurance cover will be maintained with a reputable insurer and on terms approved by the Authority.
- 28.3 The Service Provider will produce evidence to the Authority on reasonable request of the insurance policies set out in **Clause 28.1** and payment of all premiums due on each policy.
- 28.4 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in **Clause 28.1** being or becoming void, voidable or unenforceable.
- 29. The Authority's Data**
- 29.1 The Service Provider acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's data. The Service Provider shall not, and shall procure that the Temporary Workers shall not, delete or remove any copyright notices contained within or relating to the Authority's data.
- 29.2 The Service Provider and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's data and to prevent any corruption or loss of the Authority's data.

30. Intellectual Property Rights

- 30.1 The Service Provider agrees and acknowledges that all Intellectual Property Rights created or developed in the provision of the Services or otherwise arising from or in connection with the Services, this Agreement or a Contract, including all Intellectual Property Rights created or developed by or on behalf of the Service Provider or the Temporary Workers, shall vest in and belong absolutely and exclusively to the Authority (or its nominee). The Service Provider hereby assigns, or shall procure the assignment of, with full title guarantee and at no charge or royalty all such Intellectual Property Rights capable of present assignment to the Authority (or its nominee) together with the right to sue for past infringement. Where such future rights cannot be assigned by present assignment the Service Provider agrees to take all such steps and do all such things, including executing all documents, as may be necessary to vest such Intellectual Property Rights in the Authority (or its nominee) on their creation.
- 30.2 The Service Provider shall provide the Authority and the members of the Group with copies of all work and materials relied upon or referred to in the creation or development of the Intellectual Property Rights referred to in **Clause 30.1** and with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such work and materials in connection with the use of such Intellectual Property Rights.
- 30.3 Pursuant to **Clause 30.1**, the Service Provider undertakes that it:
- 30.3.1 has (or that it will have in place prior to the commencement of an Assignment), or will procure that the Authorised Sub-contractors have, contracts with the Temporary Workers such that any Intellectual Property Rights arising out of or in connection with an Assignment shall (subject to the **Clause 30.3.2**) vest in the Service Provider or any Authorised Sub-contractor, as applicable, and that each Temporary Worker is obliged to waive all moral rights and rights of a like nature in such Intellectual Property Rights. The Authority may on demand at any time require the Service Provider to produce all and any Temporary Worker contracts for inspection by the Authority; and
- 30.3.2 will, or will procure that the Temporary Workers will, execute such further documents and do such acts as may be necessary for securing, confirming or vesting absolutely the Authority's (or its nominee's) full rights, title and interest in the Intellectual Property Rights referred to in **Clause 30.1** and for conferring on the Authority (or its nominee) all rights of action in respect of any claim for infringement by third parties.
- 30.4 The Service Provider shall have no right (save where expressly permitted under this Agreement or with the Authority's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Authority or the Group.
- 30.5 The Service Provider shall indemnify, keep indemnified and hold harmless the Authority and the other members of the Group (including their respective employees, sub-contractors and agents) against all losses incurred or suffered that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights of a third party resulting from the Authority's use of Intellectual Property Rights assigned or licensed, created, developed or provided by or on behalf of the Service Provider or the Temporary Workers.

31. London 2012

The Service Provider shall not (without the prior written approval of the London Organising Committee of the Olympic Games Limited ("LOCOG") in each case) represent that any products or Services provided under this Agreement or any Contract have been endorsed or approved by the Authority, the British Olympic Association, the British Paralympic Association, LOCOG or any other official Olympic or Paralympic body, or that the Service

Provider (including any of its products or services) are in any way associated with those organisations, the Olympic Games and/or Paralympic Games, or London 2012, including by publishing or issuing any statement (factual or otherwise) about the Service Provider's provision of the products or Services to the Authority or any member of the Group.

32. **Protection of Personal Data**

32.1 The Service Provider shall at all times:

32.1.1 comply with the obligations on a data controller under the Data Protection Act 1998 and any similar legislation relating to any Personal Data which is processed, collected or maintained by the Service Provider or transferred to the Client or any third party; and

32.1.2 if processing Personal Data on behalf of the Client, shall only carry out such processing for the purposes of providing the Services in accordance with the Contract and shall act in accordance with instructions from the Client.

32.2 Without prejudice to **Clause 32.1**, the Service Provider shall:

32.2.1 take appropriate technical and organisational security measures, that are satisfactory to the Authority, against unauthorised or unlawful processing of Personal Data and against accidental loss, destruction of, or damage to such Personal Data;

32.2.2 provide the Authority with such information as it may from time to time require to satisfy itself of compliance by the Service Provider with **Clause 32.2.1**;

32.2.3 co-operate with the Authority in complying with any subject access request and/or responding to any enquiry made or investigation or assessment of Processing initiated by the Information Commissioner in respect of any Personal Data;

32.2.4 when notified by the Authority, comply with any agreement between the Authority and any data subject in relation to any processing which causes or is likely to cause substantial and unwarranted damage or distress to such data subject, or any court order requiring the rectification, blocking, erasure or destruction of any Personal Data;

32.2.5 take reasonable steps to ensure the reliability of personnel having access to Personal Data and to ensure that such personnel are fully aware of the measures to be taken and the Service Provider's obligations under this **Clause 32** when processing Personal Data; and

32.2.6 not Process any Personal Data outside the European Economic Area (or any country deemed adequate by the Commission pursuant to Article 25(6) Directive 95/46/EC) without the Authority's prior written consent.

32.3 When the Service Provider receives a written request from the Client for information about, or a copy of, Personal Data, the Service Provider shall supply such information or data to the Client within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within ten (10) Business Days from the date of the request.

32.4 The Client remains solely responsible for determining the purposes and manner in which Personal Data is to be processed on behalf of the Client. The Service Provider shall not share any Personal Data of the Client with any sub-contractor or third party unless there is a written contract in place with the Client which requires the sub-contractor or third party to:

- 32.4.1 only process the Client's Personal Data in accordance with the Client's instructions to the Service Provider; and
 - 32.4.2 comply with the same obligations with which the Service Provider is required to comply with under this **Clause 32**.
- 32.5 Without prejudice to **Clause 32.4**, the Service Provider shall procure that any sub-contractor processes Personal Data in accordance with the Data Protection Act 1998.
- 32.6 For the purpose of this **Clause 32** the term 'Personal Data' means personal data and sensitive personal data as defined in the Data Protection Act 1998 and such other terms are as defined in the Data Protection Act 1998.
- 33. Confidentiality and Announcements**
- 33.1 Subject to **Clause 34**, each Party will keep confidential:
- 33.1.1 the terms of this Agreement and all Contracts; and
 - 33.1.2 any and all Confidential Information that it may acquire in relation to the other party.
- 33.2 Neither Party will use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers and employees, and in the case of the Service Provider, the Service Provider's Personnel, including Authorised Sub-contractors, comply with the provisions of **Clause 33.1**.
- 33.3 The Service Provider warrants and undertakes to, and will procure that all of the Service Provider's Personnel including all Authorised Sub-contractors shall, keep confidential any and all Confidential Information that they may acquire in relation to the Client and shall not use such Confidential Information for any purpose other than to perform their obligations under an Assignment. The Service Provider shall be liable for any breach of this Clause committed by any of the Service Provider's Personnel, including sub-contractors.
- 33.4 The obligations on a Party set out in **Clause 33.1** will not apply to any Confidential Information which:
- 33.4.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this **Clause 33**); or
 - 33.4.2 is disclosed with the prior written consent of the other Party; or
 - 33.4.3 is disclosed by the Authority to another Functional Body in the proper performance of its duties or to ensure compliance by the Authority or any member of the Group with any of its statutory duties and all applicable laws and regulations; or
 - 33.4.4 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 33.5 The provisions of this **Clause 33** will survive any termination of this Agreement or Contract for a period of five (5) years from termination.
- 33.6 The Service Provider shall not without the prior written consent of the Temporary Worker Recruitment Manager advertise or announce that it is carrying out work for the Client.
- 34. Freedom of Information**
- 34.1 For the purposes of this **Clause 34**:

- 34.1.1 “FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 34.1.2 “Information” means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; and
- 34.1.3 “Information Request” means a request for any Information under the FOI Legislation.
- 34.2 The Service Provider acknowledges that the Authority:
- 34.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and
- 34.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 34.3 Without prejudice to the generality of **Clause 34.2**, the Service Provider shall and shall procure that its Authorised Sub-contractors (if any) shall:
- 34.3.1 transfer to the Temporary Worker Recruitment Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Request relevant to this Agreement or a Contract, the Services or any member of the Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and
- 34.3.2 in relation to Information held by the Service Provider on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within five (5) Business Days of a request from the Authority (or such other period as the Authority may reasonably specify), and in such forms as the Authority may reasonably specify.
- 34.4 The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

35. **Dispute Resolution**

The Authority or the relevant Client, as applicable, and the Service Provider shall use reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or a Contract (“Dispute”) in accordance with **Schedule 10** before resorting to litigation.

36. **Breach and Termination**

- 36.1 A Client shall be entitled, for whatever reason, to terminate an Assignment by giving to the Service Provider written notice which will be 24 hours' notice of termination during the first thirty (30) days of the Assignment and, thereafter, one (1) week's notice.

- 36.2 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate this Agreement or the Client may terminate any Contract immediately upon giving notice to the Service Provider if the Service Provider:
- 36.2.1 has committed any material or persistent breach of this Agreement or a Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within ten (10) Business Days (or such other timeframe as specified by the Authority) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or
 - 36.2.2 is at a red warning level with regard to the Service Levels referred to in **Clause 14.4**;
 - 36.2.3 is at a red warning level simultaneously on three or more of the Service Levels on at least two occasions;
 - 36.2.4 fails to verify the employment status for a Temporary Worker resulting in an illegal appointment of that Temporary Worker;
 - 36.2.5 is subject to an Insolvency Event; or
 - 36.2.6 provides the Authority or the Client with any false or misleading information with regard to its ability to perform the Services; or
 - 36.2.7 is prevented, restricted or prohibited from carrying out the Services for whatever reason; or
 - 36.2.8 undergoes a change in ownership or control in breach of **Clause 38**; or
 - 36.2.9 uses a Secondary Service Provider to provide Temporary Workers without consent; or
 - 36.2.10 commits any of the money laundering related offences listed in the Public Contract Regulations 2006.
- 36.3 Without prejudice to any of the Authority's or the Client's other rights, powers or remedies (whether under the Contract or otherwise) if the Service Provider is in breach of any of its warranties and/or obligations under **Clause 12** and/or any of its other obligations in respect of the Services under the Contract, the Service Provider shall, if required to do so by the Authority or the Client, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this **Clause 36.3** shall prevent the Authority or the Client from itself performing or procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Authority or the Client so performs or procures any Services or any remedial action, the Authority and the Client shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the Authority or the Client and attributable to the Authority or the Client performing or procuring such Services or remedial action from such alternative contractor.
- 36.4 Neither Party (including for the purpose of this Clause, the Client) shall be deemed to be in breach of this Agreement or the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations to the extent that such failure or delay is due to a Force Majeure Event. If a Party is affected by a Force Majeure Event ("Affected Party"), it will:
- 36.4.1 give written notice to the other Party, specifying the nature and extent of the Force Majeure Event, immediately on becoming aware of the Force Majeure Event and will at all times use all reasonable endeavours to bring the Force Majeure Event to an end and, whilst the Force Majeure Event is continuing, to

mitigate its severity including without limitation by operating the Disaster Recovery Plan; and

36.4.2 not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.

If a Force Majeure Event has continued for more than eight (8) weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on the Affected Party's performance of its obligations under the Contract, then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("Innocent Party") may terminate this Agreement or the Contract immediately upon giving notice to the Affected Party. If this Agreement or the Contract is terminated in accordance with this **Clause 36.4** then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

36.5 Without prejudice to the Authority's right to terminate this Agreement or the Client's right to terminate a Contract under **Clause 36.2** or any rights of termination at common law, the Authority may terminate this Agreement or the Client may terminate a Contract at any time without cause subject to giving the Service Provider written notice of the period specified in **Schedule 1**, provided that this **Clause 36.5** may be disapplied by notice to that effect in **Schedule 1**.

36.6 To the extent that the Authority has a right to terminate this Agreement or the Client has a right to terminate a Contract under this **Clause 36** then, as an alternative to termination, the Authority or the Client may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the Authority's or the Client's notice ("Change Date") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Authority's or the Client's opinion a proportionate adjustment would not be reasonable in such manner as the Authority or the Client may determine.

36.7 For the purpose of **Clause 36.2.1**, a persistent or a material breach that is not capable of remedy, includes if the Authority forms the view that as a result of such breach there is a significant risk that the Service Provider has or will compromise the Authority's performance of its statutory functions, or any statutory duties to which the Authority may become subject from time to time, or, if the Services were to continue, would be likely to compromise such performance in the future.

37. **Consequences of Termination or Expiry**

37.1 Notwithstanding the provisions of **Clause 33**, wherever the Authority chooses to put out to tender for a replacement service provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender (whether for purposes related to Transfer Regulations or otherwise). The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

37.2 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.

37.3 Upon expiry or termination of this Agreement or a Contract (howsoever caused):

37.3.1 the Service Provider shall, at no further cost to the Authority or the Client:

37.3.1.1 implement and comply with the Exit Strategy and take all steps as necessary to implement the orderly handover of the Services to the Client or a replacement service provider, such that the

Services can be carried on with the minimum of interruption and inconvenience and to effect such handover, which shall include an obligation to promptly provide a copy of all relevant records in whatever format the Client or a replacement service provider may reasonably require and any information the Client or a replacement service provider may require for purposes related to the Transfer Regulations or otherwise;

- 37.3.1.2 on receipt of the Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks; and
 - 37.3.1.3 promptly deliver up to the Client all documents and records relating to or otherwise in connection with the Contract and all Assignments including a copy of all relevant records in whatever format the Client may reasonably require and all property and materials supplied by or on behalf of the Client, including any Confidential Information and Intellectual Property Rights of the Client;
 - 37.3.2 with effect from the date of termination, and until such time as the Exit Strategy has been completed, the Service Provider agrees to continue the provision of the Services to the Client as the Client may require in accordance with the terms and conditions of this Agreement or a Contract, except that it will be entitled to be paid for such Services and all other actions necessary to implement this Clause at the Charges that were in force on or immediately prior to termination or, where the Charges do not apply to such Services, at such other charges as pre-agreed with the Client. Such charges will be payable by the Client within thirty (30) Business Days of the Client receiving an invoice therefore containing a break-down of the employees, charging rates and their costs incurred in connection with this Clause;
 - 37.3.3 the Client shall (subject to **Clauses 37.3.4** and **37.4** and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with this Agreement and a Contract up to the date of termination or expiry calculated so far as is possible in accordance with **Schedule 6** or otherwise reasonably determined by the Client; and
 - 37.3.4 the Authority or the Client shall not be liable to the Service Provider for any loss of profit, loss of contract or any other losses and/or expenses of whatsoever nature arising out of or in connection with any expiry or termination or as a result of a reduction of Services under **Clause 36.6**.
- 37.4 On termination of this Agreement or a Contract under **Clause 36.2** or a cessation of any Services under **Clause 36.6** (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the Authority or the Client to terminate under **Clause 36.2**), the Authority or the Client may enter into any agreement with any third party or parties as the Authority or the Client thinks fit to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority or the Client in having such services carried out and all other costs and damages reasonably incurred by the Authority or the Client in consequence of such termination. The Authority or the Client may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.
- 37.5 Subject to clause 37.6, upon the expiry of the Agreement:
 - 37.5.1 if the Service Provider is not reappointed by the Authority, the Service Provider will: (i) inform its Temporary Workers that it is no longer the preferred supplier of

the Authority; and (ii) provide its Temporary Workers with a list, provided by the Authority to the Service Provider, of agencies who are the preferred suppliers to the Authority under a new agreement; or

- 37.5.2 if the Service Provider is reappointed by the Authority as a preferred supplier, the Service Provider will enter into a new agreement with the Authority in accordance with the terms of a standard form agreement for preferred suppliers of the Services; and
- 37.6 Subject always to any provision for notice periods (or any other statutory time period) contained in the applicable law, including but not limited to the Employment Agencies Act, the Service Provider will:
- 37.6.1 accept or agree to the transfer of Temporary Workers to or from its organisation, as applicable, without passing on any charge to the Authority; and
 - 37.6.2 assist the Authority, the Client and any replacement service provider in respect of the handover of the Services including complying with the Authority's instructions with regard to all aspects of the handover including Authority timescales.

38. Change of Ownership

38.1 The Service Provider shall:

- 38.1.1 not without the prior written consent of the Authority undergo any change in the ownership or control of the Service Provider where such change relates to 50% or more of the issued share capital or voting rights of the Service Provider; and
- 38.1.2 give notice to the Authority in the event that there is any change in the ownership or control of the Holding Company where such change relates to 50% or more of the issued share capital or voting rights of the Holding Company, such notice to be given within ten (10) Business Days of the date on which such change takes effect.

39. Disaster Recovery

- 39.1 The Service Provider will ensure that at all times that the Disaster Recovery Plan is adequate, at the least, to minimise the effect of any Disaster.
- 39.2 The Disaster Recovery Plan will be tested in accordance with the provisions of **Schedule 9**. It will be deemed to be adjusted as necessary to take into account any change to the Services made in accordance with **Clause 18** or as otherwise agreed by the Parties in writing.
- 39.3 Where the Service Provider can demonstrate to the reasonable satisfaction of the Client that a Disaster was caused by a Force Majeure Event the provisions of **Clause 36.4** will apply but only to the extent that such Disaster prevents the Service Provider from satisfying its obligations and, provided that the Service Provider complies with the provisions of **Clauses 36.4.1** and **36.4.2**, the requirement to comply with the Service Levels will cease to apply until such time as the provision of the Services are resumed or ought to have been resumed, whichever is the earlier, in accordance with the Disaster Recovery Plan.
- 39.4 Where a Disaster arises from circumstances other than those set out in **Clause 39.3**, the Service Provider's liability to comply with the Service Levels will continue in accordance with the provisions of this Agreement.
- 39.5 In the event of a Disaster affecting either or both Parties, the Service Provider will immediately implement the Disaster Recovery Plan and will continue to provide those elements of the Services which are not affected by the Disaster to the Client in accordance

with the provisions of this Agreement. In respect of any part of the Services which are affected by the Disaster, the Service Provider will comply with the Disaster Recovery Plan, the rest of this **Clause 39** and this Agreement.

40. **Survival**

The provisions of **Clauses 1, 4, 8 - 12** (inclusive), **25 - 35** (inclusive), **41 - 49** (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement or a Contract. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Contract shall do so.

41. **Rights of Third Parties**

41.1 The Service Provider acknowledges that:

41.1.1 the Authority is procuring the Services for itself and the Client; and

41.1.2 each Client has the right to request and receive the provision of the Services and the supply of Temporary Workers under a Contract in accordance with this Agreement. In such circumstances:

41.1.2.1 the Client will be treated as if they were the Authority for the purpose of this Agreement;

41.1.2.2 without prejudice to **Clause 41.1.3**, any loss suffered or incurred by a Client arising out of or in connection with this Agreement to the extent not recovered by the Client pursuant to **Clause 41.1.3** will for the purpose of this Agreement be regarded as being suffered by the Authority; and

41.1.3 each Client will be entitled to enforce (or request the Authority to enforce on their behalf) the terms of this Agreement against the Service Provider.

41.2 Save that:

41.2.1 any Functional Body as set out in **Clause 4.5**;

41.2.2 a Replacement Service Provider under **Schedule 9**; and

41.2.3 any member of the Group, the Authority or the Client

has the right to enforce the terms of this Agreement or any relevant Contract in accordance with this Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of this Agreement or any relevant Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

41.3 Notwithstanding the rest of this **Clause 41**, the Parties are entitled to vary or rescind this Agreement or any relevant Contract without the consent of the Client or any other person set out in **Clause 41.2**.

42. **Most Favoured Customer**

If at any time during the Term, the Service Provider offers to any other customer or prospective customer any more favourable or better terms, including charges, discounts, warranties, benefits or other terms, in relation to the supply of the same or similar services to the Services, the Service Provider shall immediately notify the Client of the better terms, and shall offer to amend the terms of this Agreement and any Contract (including existing Contracts) so that the Client may also receive the Services on the better terms.

43. **Variations**

43.1 Save where the Client may require an amendment to the Services in accordance with **Clause 18** or a variation to the Charges in accordance with **Clause 8.3**, the terms of this Agreement may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as the Authority may dictate and shall not be binding upon the Parties unless completed in accordance with such form of variation.

43.2 In the event that an amendment is implemented pursuant to the provisions of **Clause 43.1** and such change is to the terms of the Contract, the Client and the Service Provider shall agree implementation of the change to extant affected Contracts as follows:

43.2.1 the change shall not be implemented in any extant Contracts; or

43.2.2 the Service Provider shall give each Client that is the party to each such affected extant Contract the option to implement the change in their Contract pursuant to the procedure for contract change set out in the relevant Contract.

44. **Novation**

44.1 The Authority may novate or otherwise transfer this Agreement and the Client may novate or otherwise transfer any relevant Contracts (in whole or in part).

44.2 Within ten (10) Business Days of a written request from the Authority or the Client, the Service Provider shall at its expense execute such agreement as the Authority or the Client may reasonably require to give effect to any such transfer all or part of its rights and obligations under this Agreement and any relevant Contract to one or more persons nominated by the Authority or the Client.

44.3 The Service Provider shall not assign the benefit or delegate the burden of this Agreement or otherwise transfer any right or obligation under this Agreement without the prior written consent of the Authority.

45. **Non-Waiver of Rights**

No waiver of any of the provisions of this Agreement or any relevant Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Clause 47**. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

46. **Illegality and Severability**

If any provision of this Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

47. **Notices**

47.1 Subject to **Clause 47.2**, any notice, demand or communication under or in connection with:

47.1.1 this Agreement will be in writing and may be delivered by hand, post or facsimile addressed to the recipient at the address stated in **Schedule 1**;

47.1.2 any Contract will be in writing and may be delivered by hand, post or facsimile addressed to the recipient at the address stated in the Contract,

or, in each case, any other address (including a facsimile number) notified to the other party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent.

47.2 The notice, demand or communication will be deemed to have been duly served:

47.2.1 if delivered by hand, at the time of delivery;

47.2.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 days (excluding Saturdays, Sundays and public holidays) after being posted; or

47.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission,

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

48. **Entire Agreement**

48.1 Subject to **Clause 48.2**:

48.1.1 this Agreement and any relevant Contract and all documents referred to in this Agreement and any relevant Contract, contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into this Agreement by a statement which it does not contain; and

48.1.2 and without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against the Authority or any member of the Group in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

48.2 Nothing in this **Clause 48** excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

49. **Relationship of the Parties**

Nothing in this Agreement or any relevant Contract constitutes, or shall be deemed to constitute, a partnership between the Parties or a relationship or employer and employee or principal and agent. Except as expressly provided in this Agreement or any relevant Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

50. **Further Assurance**

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement and any relevant Contract.

51. **Governing Law**

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to **Clause 35**, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

THIS AGREEMENT has been signed for and on behalf of the Parties the day and year written above.

Signed by
for and on behalf of
The Authority

)
)
)

Signature

Print name and position
Date:

Signed by
for and on behalf of
Service Provider

)
)
)

Signature

Print name and position
Date:

SCHEDULE 1

Key Agreement Information

1. **Agreement Reference Number:** TfL / Co / 01792
2. **Name of Service Provider:** Morson Human Resources Limited trading as Morson International
3. **Agreement Commencement Date:** 29 April 2010
4. **Term:** A period of three (3) years from the Agreement Commencement Date. TfL may, at its sole discretion, extend the Agreement by a further 12 months.
5. **Interest Rate:** [REDACTED] over HSBC Bank plc base rate from time to time.

6. **Details of the Authority's Temporary Worker Recruitment Manager**

Name: Kirsty Green
Address: 14 Pier Walk, North Greenwich, LONDON SE10 0ES
Tel: [REDACTED]
Fax: [REDACTED]
Email: kirstygreen@tfl.gov.uk

7. **Details of the Service Provider's Services Manager**

Name:
Address:
Tel:
Fax:
Email:

8. **Insurance Cover:** The minimum insurance cover that the Service Provider shall maintain on a per incident basis shall be:

- (a) Public Liability Cover: £5 million pounds (five million pounds).
- (b) Employers Liability Cover: £5 million pounds (five million pounds).
- (c) Additional Cover: [INSERT DETAILS]

9. **Notice period in accordance with Clause 36.5 (termination without cause):** ninety (90) days

10. **Address for service of notices and other documents in accordance with Clause 48:**

For the Authority:

For the attention of: Alex Mills
Address: Windsor House
42-50 Victoria Street
London SW1H 0TL

Facsimile number: [REDACTED]

For the Service Provider:

For the attention of:
Address:

Facsimile number:

SCHEDULE 2

Special Conditions

1. IT Systems

- 1.1 The Authority will be entitled to post its requirements for Temporary Workers on the System.
- 1.2 The Service Provider shall access the System to review the Authority's requirements for Temporary Workers and shall submit to the Authority through the System curriculum vitae for proposed Temporary Workers in accordance with the terms of the Agreement.
- 1.3 The Service Provider shall be provided with a password to enable it to access the System. The Service Provider shall ensure that:
 - 1.3.1 the password is kept secure and only disclosed to authorised personnel of the Service Provider; and
 - 1.3.2 only authorised personnel of the Service Provider access and submit information (including curriculum vitae) to the Authority through the System; and
 - 1.3.3 the Service Provider shall immediately notify the Authority of any breach or suspected breach of security.
- 1.4 The Service Provider shall:
 - 1.4.1 make proper use of and comply with all reasonable instructions and/or procedures issued by the Authority in relation to the use of the System;
 - 1.4.2 notify the Authority immediately of any faults in the System or problems accessing and using the System;
 - 1.4.3 implement up-to-date anti-virus measures in accordance with industry good practice from time to time in relation to its access to the System and any materials that the Service Provider submits through the System;
 - 1.4.4 on request from the Authority, provide to the Authority such information to evidence the Service Provider's compliance with paragraph 1.4.3 or allow the Authority to audit the Service Provider's systems to ensure compliance with paragraph 1.4.3;
 - 1.4.5 ensure that no computer virus is introduced to the System or any of the Authority's computer equipment or systems by any act, omission or negligence of the Service Provider or the Service Provider's Personnel; and
 - 1.4.6 not, and shall procure that the Service Provider's Personnel shall not:
 - 1.4.6.1 modify, merge, interface or combine the whole or any part of the System with any other software or systems;
 - 1.4.6.2 upload any materials or other documents onto the System, except as expressly permitted under this paragraph 1;
 - 1.4.6.3 infringe the rights of any person in relation to the System;

- 1.4.6.4 do anything which could affect the functionality or performance of the System, or render it inoperable or more difficult to use; or
 - 1.4.6.5 cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of the System.
- 1.5 The Service Provider acknowledges that the Authority is not holding itself out as a professional provider of information technology systems or services relating to the System, and as such, the Authority gives no warranties or representations with regard to the System.
- 1.6 Without limiting any other terms or conditions of the Agreement, the Service Provider shall not (and shall ensure that the Service Provider's Personnel, including the sub-contractors shall not) do anything which constitutes an offence under the Computer Misuse Act 1990.
- 2. Assistance to the Authority**
- 2.1 Without limiting the provisions of the Specification or any other terms and conditions of the Agreement, the Service Provider shall (and shall ensure that the subcontractor and the Temporary Workers shall) provide to the Authority such information, assistance, access, attendance of personnel and co-operation as the Authority may reasonably require from time to time:
- 2.1.1 to enable the Authority to meet its obligations to provide audited accounts, reports and returns pursuant to regulations, directions or guidance applicable to the Authority or as required by external agencies;
 - 2.1.2 to answer enquiries (including from government bodies, the general public, members or officials of the Authority, Parliament and Members of Parliament, and third parties entitled to request or receive information from the Authority); and
 - 2.1.3 for any investigation by a relevant agency, body or ombudsman (and without limiting any other of the Authority's rights or remedies, the Authority shall be entitled to recover from the Service Provider any payment ordered or required to be paid by the Authority under such investigation which arises because of a direct or indirect breach of the Agreement or a Contract or a negligent act or omission of the Service Provider or subcontractor or a Temporary Worker).
- 2.2 The above information, assistance, access, attendance of personnel and co-operation shall be provided at no additional charge to the Authority.
- 3. Authority's Operations and Reputation**
- 3.1 The Service Provider shall (and shall ensure that the Authorised subcontractor(s) and the Temporary Workers shall):
- 3.1.1 take all reasonable care to ensure that the provision of the Services does not interfere with the operations of the Authority; and
 - 3.1.2 not take any action which might or shall:
 - 3.1.2.1 harm or be prejudicial to the public confidence in the Authority or to its public image; or
 - 3.1.2.2 bring the Authority into disrepute.
- 3.2 Without limiting paragraph 3.1 above, the parties shall work together to endeavour to maintain the public image of the Authority, where the provision, delivery or receipt of the Services may be part of (or may otherwise affect) that public image.

4. **Security**

- 4.1 The Service Provider shall not (and shall ensure that the subcontractors and Temporary Workers shall not) do any act or make any omission, which has or could reasonably be expected to have an adverse impact upon the security of the business and operations of the Authority.
- 4.2 Without limiting paragraph 4.1, the Service Provider shall comply (and shall ensure that the subcontractors and Temporary Workers shall comply) with the provisions of the Specification and the Authority's standards, policies, procedures and regulations, regarding security including those differing standards and requirements that are applicable at each Premises.
- 4.3 Without prejudice to paragraph 4.2, when requested by the Authority the Service Provider shall procure that all Temporary Workers have been security cleared by the Authority to a security level of Counter Terrorist Check or higher before they commence work in relation to the Services and thereafter, the Service Provider shall procure that such security clearances are applied for upon their expiry. If the Authority gives consent to Temporary Workers working on the Services with a security clearance lower than Counter Terrorist Check, the Authority may require as a condition of such consent, that:
- 4.3.1 the Service Provider procure that such Temporary Workers sign a confidentiality undertaking in the form specified by the Authority; and
- 4.3.2 the Service Provider shall notify the Authority in writing in advance if the Service Provider wishes to make any significant future change to the role of such Temporary Workers and within a reasonable period of receipt of such notice the Authority shall notify the Service Provider if it requires that such Temporary Workers be security cleared by the Authority to a security level of Counter Terrorist Check, before the change in their role can be implemented. If the Authority does, at its absolute discretion, require that such Temporary Workers be so cleared, the Service Provider shall not change their role until they have been cleared by the Authority to a security level of Counter Terrorist Check.
- 4.4 If upon expiry of any security clearances the Authority refuses to renew the security clearance, the Parties shall discuss in good faith to reach agreement as to how to mitigate any impact on the provision of the Services arising from such non-renewal of security clearance, but without prejudice to paragraph 4.6.
- 4.5 The Service Provider shall, and shall procure that the subcontractors shall, seek security clearance from the Authority for:
- 4.5.1 Temporary Workers who are both proposed to be assigned or engaged in the delivery of the Services; and
- 4.5.2 a reasonable number of additional staff who would be available for call out at short notice to enable the day to day operation of the Services.
- 4.6 The Authority shall be entitled at any time for security reasons to require the Service Provider by notice in writing not to appoint or to remove from the provision of the Services any Temporary Worker.

SCHEDULE 3

Transition Plan

The Transition Plan shall be submitted by the Service Provider and reviewed and agreed by the Authority within 3 months of the Commencement Date of the Agreement.

SCHEDULE 4

Services Specification

1.1 General

In all circumstances, TfL will have no direct employment relationship with any Temporary Worker engaged. No Temporary Worker engaged by TfL will be deemed a TfL employee and TfL will not be deemed the employer of any Temporary Worker supplied by the Service Provider.

1.2 Tiered Service Providers

As set out in clause 7 of the Agreement, only with the express written permission of an authorised TfL representative, can a Service Provider use a second tier or sub-contractor to meet TfL's requirements. In the event that this is approved, all SLAs /KPIs will remain the same and the Service Provider shall have an open book policy for pay and charge rates. Failure to do so may result in contract termination.

1.3 Temporary Worker Requirements

The type and pay and any qualifications and experience required will be detailed by the Temporary Worker Recruitment Manager. The Service Provider must ensure that any candidates put forward match the requests.

Unless specified the Temporary Worker will normally be expected to work TfL's normal working hours of 35 hours per week and will also be expected to take a one hour lunch break. The above hours may be changed from time to time at the sole discretion of TfL.

Overtime is payable at the discretion of the Temporary Worker Recruitment Manager and will not be paid unless prior approval to any changes to pay rates has been given by the Temporary Worker Recruitment Manager. No overtime charges will be paid by TfL unless prior approval for overtime has been agreed between the Temporary Worker Recruitment Manager and TfL Interim Team.

No Temporary Worker will be allowed to work flexibly/flexi-time or take time off in lieu. TfL will not be due to make any payment to the Service Provider if it is discovered that TfL has been invoiced for such working practices.

If requested the Service Provider will arrange for a Temporary Worker to be tested to ensure that required capabilities are met prior to being assigned to TfL and the test and results will be made available to TfL on request.

The Temporary Worker Recruitment Manager may wish to interview potential Temporary Workers prior to engagement. This will be done at no extra cost to TfL.

The Service Provider will provide the Temporary Worker with the following information before they begin the engagement:

- Location of place of assignment
- Organisation/Department

- Who to report to
- When to report
- Duties
- Expected length of assignment
- Pay rates
- Hours to be worked
- That TfL will not pay travel expenses to and from their place of work
- Procedures and policies which they must adhere to, particularly on Drugs and Alcohol, Conflict of Interest declarations, Fraud and Whistle-blowing
- Any required safety equipment to undertake the role

1.4 **Referencing**

The Service Provider must ensure that all Temporary Workers are fully cleared to work for TfL and the Service Provider will undertake all necessary checks at no cost to TfL. This includes, but is not limited to:

- Fully CRB checked, where appropriate, including CRB number;
- Proof of Identification and eligibility to work in the U.K;
- Written proof of any required professional qualifications;
- two written work related references obtained within the last three (3) months prior to the Temporary worker being put forward for the Assignment which have been confirmed and cleared and date back 2 years - NB in certain roles – TfL reserves the right to request the temporary worker to be referenced for 5 years;
- Completed and approved Pre-employment Health Questionnaire;
- Preview of previous Organisation work history.

TfL reserves the right to amend the requirements for references and clearances in line with any introduction of new Government legislation or TfL policy at no extra cost.

The Service Provider may be required to ensure that it does not provide Temporary Workers in certain circumstances which may be set out in a recruitment policy. Such circumstances may include:

- where the temporary worker has previously been an employee of TfL and has left within the last 2 years on grounds of early retirement and/or redundancy;

- an ex-employee of TfL who has been fairly dismissed under TfL's disciplinary or probationary procedures;

1.5 **Response Times**

The Service Provider is expected to work within the following response times.

Assignment Start date	Length of Assignment	Maximum Response Time
Same Day	Any	1 hour
Next Business day	Any	3 hours
1-2 Business days	Any	4 hours
3-6 Business days	0-12 weeks	1 Business day
3-6 Business days	12 weeks +	2 Business days
7 or more Business days	0-12 weeks	3 Business days
7 or more Business days	12 weeks +	4 Business days

If CVs have been requested the Service Provider should filter CVs to ensure that they match the requirements and should not provide more than 5 CVs to TfL.

1.6 **Quality of Service**

The Service Provider shall contact the Temporary Workers Recruitment Team on the first day of the assignment and at the end of week 1 following the Temporary Worker's start date of the engagement to ensure everything is satisfactory.

Likewise the Temporary Worker to ensure that the role is as briefed and that the Temporary Worker has everything they need.

If a Temporary Worker is deemed by TfL, at its sole discretion, to be unsuitable for the placement within the first 3 days of the commencement of engagement then the Service Provider shall terminate the engagement and cancel any charges for that engagement.

The Service Provider is required to advise the Temporary Worker Recruitment Team of contract expiry or contract terminated by their workers.

TfL will monitor the performance of the Service Provider via the provision of information from the electronic recruitment system and other elected management information and reserves the right to cancel contracts of Service Provider who consistently under-perform:

Typically this information will monitor:

- CVs received vs. CVs short listed
- Temporary Workers placed vs. CVs submitted
- Overall Fill Percentage
- Unsatisfactory candidates provided
- No Shows
- Replacement Ratio

- Worker/candidate experience
- Temporary Worker Recruitment Manager experience
- Organisation Temporary Workers Recruitment teams evaluations of service and temp workers
- Timesheets completed
- Fully referenced, CRB and other security, and eligibility checked candidates
- Cost
- Diversity, Equality and Employment

The Service Provider is also required to advise TfL when a Temporary worker is nearing 6 months or 1 year service.

1.7 **Self Billing**

Under the current model of self-billing, TfL will provide, the Service Provider with the time sheet, hours and a certified VAT invoice showing the make up of the information. The immediate benefits to both parties are:

- Improved administration
- Eliminate needless duplication of paperwork
- Reduce the number of queries
- Reduce input errors
- Remove the need for credit notes
- Speed up the payment time, we currently achieve, on average, 12 calendar days
- Reduce costs associated with Temporary Workers

Achieving the above will deliver lower unit costs and improves our financial efficiency.

To satisfy HM Revenue and Customs, the Service Provider will be required to confirm in writing on their company letterhead, their acceptance of this process. There is available on request, a copy of their approval for TfL to adopt this self-billing system. There is no requirement for you to seek approval from your HM Revenue and Customs office, although the Service Provider may wish to advise them of the change.

To signify your organisations agreement, the statement, "I confirm that our company is willing to accept a self-billing system with Transport for London", would be an appropriate form of acceptance. In addition, the Service Provider will be required to provide the following details:

Company Name:

VAT Registration No:

For Timesheets	For Invoices (if different)
Address	Address
Phone	Phone
Fax	Fax
E-mail	E-mail
Contact	Contact

There is also an option to include any specific details on the timesheet and invoice, e.g. Payroll Number, Job Number, up to 4 unique pieces of information per Temporary Workers. TfL requests that the Service Provider confirms if this would be appropriate for their Company, in the above letter of acceptance.

1.8 **Timesheets and Invoices**

Once the Temporary Worker has commenced work they will be required to complete their timesheets which they should be able to access through the SAP portal on Source (TfL intranet). It is the responsibility of the Service Provider to ensure that their workers are aware of this and they are given adequate guidance to complete these on time.

It is expected that all Temporary Workers will complete their timesheets electronically. TfL will take responsibility for the generation and delivery to the Service Provider of both the Timesheet and the Invoice. The invoice will be produced using the timesheet and the contract details, and will contain multiple lines, one for each member of staff.

Negotiations regarding rate increases for Temporary Workers and extensions to existent contracts will be managed by the Temporary Worker Recruitment Team on behalf of the Temporary Worker Recruitment Managers.

All invoices must include the following information:

- the Contract number;
- the Purchase Order number;
- the Specification number;
- an invoice number;
- the project number;
- a detailed description of the Services and/or Deliverables;

- a detailed description of any expenses and the amounts of such;
- the location, date or time period of delivery of the Services and/or
- Deliverables;
- the Service Provider's VAT number;
- confirmation of the agreed pay rate and charge rate and the mark-up applied;
- the amount due exclusive of VAT, other duty or early settlement discount;
- the VAT rate;
- the amount of any other duty or early settlement discount;
- the amount due inclusive of VAT and any other duty or early settlement discount;
- the source/name of the person responsible for the order to which the invoice relates;
- the source of authorisation of payment;
- details of the Service Provider's BACS details or other method of payment;
- the Service Provider's contact details; and
- the date of the invoice.
- State if the invoice is a copy where appropriate.

SCHEDULE 5

Service Level Agreement

The Employment Business shall perform the following activities and meet the following service levels as a minimum when providing the Services. The Employment Business performance shall be measured and reported to TfL on a monthly basis.

The Authority will review the efficacy of the SLAs during the currency of the Agreement.

1. QUALITY MEASURES – TEMPORARY WORKER PERFORMANCE

Service Level	Description	Red	Amber	Green
Measuring attrition rates	Percentage of Temporary Workers that have completed the duration of the original Contract	< 90%	90 - 94%	95%
Attendance and time keeping	Percentage of Temporary Workers that achieve a minimum of 'good' at end of assignment reviews	< 90%	90 - 99%	100%
Sickness and Absence from work	Percentage of Temporary Workers that achieve a minimum of 'good' at end of assignment reviews	< 90%	90 - 99%	100%
Aptitude	Measuring the level of managers that report 'good' and excellent in Temporary Worker evaluation of aptitude	< 90%	90 - 99%	100%
Quality of CV submissions	One interview for every three CVs submitted	< 90%	90 – 94%	95%

2. QUALITY MEASURES – EMPLOYMENT BUSINESS PERFORMANCE

Service Level	Description	Red	Amber	Green
Vetting of Temporary Workers prior to submission	All Temporary Workers to be pre-screened in a face to face interview, reference checked, CRB checks (where necessary)and all necessary qualifications and experience checked – Prior to submission	Failure may result in termination		100%
Qualifications	Confirm all relevant qualifications with relevant institute - Prior to submission	Failure may result in termination		100%

Aptitude	The Employment Business to confirm Temporary Worker's interest in specific vacancy, and that they are fully briefed and agreeable to the terms and conditions of the assignment i.e. duration, role content, pay rate - To be ascertained prior to submission	Failure may result in termination		100%
CVs	All CVs to be submitted with a summary cover sheet and to contain all relevant and accurate information - On CV submission	< 90%	90 - 99%	100%
Security clearance	All relevant security clearance will be fully verified by Employment Business - Prior to start of assignment by Temporary Worker	Failure may result in termination		100%
Equal Opportunities monitoring	All Temporary Workers submitted to TfL Group whether successful or unsuccessful must be asked to submit a diversity monitoring questionnaire - Prior to submission of Temporary Worker details	Failure may result in termination		100%
Temporary Worker Guarantee	If TfL Group Member is not satisfied with the Temporary Worker's performance, no charge will be payable by TfL Group Member - During first working week of assignment	< 90%	90 - 99%	100%
Response Times	The Employment Business shall, from the time of receipt of Request to the submitting of compliant CVs meet the required response times outlined in Schedule 4.1.5. unless subject to alternate SLAs with Interim Recruitment.	< 90%	90 - 99%	100%
Time to Hire	The Employment Business shall, from the time of receipt of Request to the making of a verbal offer of engagement to Candidate, not exceed 15 Working Days, subject to alternate SLAs with the Interim Recruitment.	< 90%	90 - 99%	100%

3. **QUALITY MEASURES – EMPLOYMENT BUSINESS PERFORMANCE
(CONTINUED)**

Service Level	Description	Red	Amber	Green
Initial progress check	The Employment Business will check in with the line manager, to confirm initial details of placement - Within 1 hour of the agreed start time for each new Temporary Worker and assignment	< 90%	90 - 99%	100%
On-going progress checks	The Employment Business shall agree with the line manager a reasonable 'progress check' period to obtain feedback on the Temporary Worker. To ensure satisfaction and offer assistance or solutions to any issues - Every 4 weeks as a minimum	< 90%	90 - 99%	100%
First day assignment check	The Employment Business will make a progress check with the Temporary Worker at the end of the first day of the assignment.	< 90%	90 - 99%	100%

4. **QUALITY MEASURES – EMPLOYMENT BUSINESS PERFORMANCE
(CONTINUED)**

Service Level	Description	Red	Amber	Green
Length of service notification	The Employment Business shall make the Line Manager and Recruitment Consultants aware on a periodic basis, of any temporary workers with 3 months tenure or over and highlight those who are within 8 weeks of 6 or 12 months service.	< 90%	90 - 99%	100%

5. MANAGEMENT REPORTING

THE FOLLOWING INFORMATION SHALL BE DRAWN FROM THE TFL E-RECRUITMENT SYSTEM AND REPORTED ON A PERIODIC BASIS, VIA LEAGUE TABLES PER CATEGORY TO THE TFL TEMPORARY WORKER RECRUITMENT MANAGERS:

Management Information	Timing	Description
Performance against Service Level Agreements	Periodically (every 4 weeks)	Against each pre-set service level agreements (success rate percentages)
Successful fill rate	Periodically	Successful placements (%)
Temporary Worker spend	Periodically	Mode Division Category of Temporary Worker
Equal Opportunities	Periodically	To cover all the Temporary Worker requests placed by TfL Group Members, the report will provide a breakdown of the diversity for all Temporary Workers submitted (to include both successful and unsuccessful).
Length of Temporary Worker assignments (to be provided additionally by the Employment Business)	Periodically	<ol style="list-style-type: none"> 1. Less than 3 months 2. Less than 6 months 3. 6 – 12 months 4. Over 12 months In addition, the Employment Business shall provide TfL with advance notification if any of its Temporary Workers are within 8 weeks of 6 or 12 months assignment lengths
Temporary Workers' performance	Quarterly	Number of Temporary Workers who were evaluated as: <ol style="list-style-type: none"> 1. Excellent 2. Good 3. Acceptable 4. Not acceptable
Reason for Temporary Worker leaving	Quarterly	<ol style="list-style-type: none"> 1. Unsuitable hours 2. Unsuitable work 3. Pay 4. Accepted alternative work – permanent 5. Accepted alternative work – temporary 6. Personality conflicts 7. Other

5.1 MANAGEMENT INFORMATION

Will be taken from TfLs e-recruitment system and analysed each period. Meetings will be arranged with underperforming Service Providers

Measurement will be based on the following;

CV's submitted to requests

CV's to Interviews

Interviews to assignment
Requests to assignment
Quality of candidates

5.2 CONTINGENCY PLANS

5.3 Sickness and replacement of Temporary Workers

Upon receipt of sickness notification from the Temporary Workers the Employment Business will notify the TfL Temporary Worker Recruitment Manager within 30 minutes of the confirmation of sickness. At the point of sickness notification, the Employment Business will confirm with the TfL Temporary Worker Recruitment Manager whether a replacement Temporary Worker will be required. In the event that a replacement Temporary Worker is required, the Employment Business must follow the guidelines set out in 'Response times'.

5.4 No shows

In the event that a Temporary Worker fails to show up for work (regardless of time into assignment) the Employment Business must endeavour to place the highest priority on a resolution to the issue. If a TfL Temporary Worker Recruitment Manager requests a replacement Temporary Workers, the Employment Business must follow the requirements set out in 'Response times'.

5.5 Unsatisfactory performance of a Temporary Workers

If TfL's Temporary Worker Recruitment Manager has any reason to doubt a Temporary Workers' performance it is the responsibility of the Employment Business to notify the Temporary Workers of assignment termination. If a Temporary Worker proves to be unsatisfactory within the first day of the assignment, TfL's Temporary Worker Recruitment Manager will log this with the Employment Business and will not be charged for the hours worked. If so requested the Employment Business will provide a replacement for the Temporary Workers, following the guidelines set out in 'Response times'.

5.6 Issue Resolution

Upon notification of a problem, the Employment Business shall respond to the TfL Temporary Worker Recruitment Manager or representative who notified the problem within 4 hours with an explanation and commitment to resolve.

SCHEDULE 6

Charges

Charges and Payment Terms

SCHEDULE 6A – MARK UPS

The Charges for Temporary Worker placements shall not exceed the maximum mark-ups on Temporary Worker pay rates (i.e. rates paid by the Agent to the Temporary Worker) set out below in Table 1. These maximum mark-ups will remain firm and fixed throughout the course of the Contract unless amended by a variation.

Table 1

Morson International Cat 4: Commercial / Procurement/Quantity Surveyors Cat 5: Engineering – Civils Cat 6: Engineering – General Cat 9: Engineering – Signals Cat 10: Health & Safety, Quality & Environmental (air quality / noise expert)	
Agency mark up to 6 months of employment (%)	██████
Agency mark up 6 months and above of employment (%)	██████
Gifted Resource mark up (%)	██████
Temp to Perm Fee (%)	██████
Note: Where a Temporary Worker has been engaged in TfL for 12 months, the above Gifted Resource mark up will apply for the remainder of the engagement	

- 3.2 the Authority shall, within 14 days of receipt of such Discount Statement, inform the Service Provider in writing to what extent it agrees the Discount Statement and/or to what extent it cannot agree the Discount Statement; and
- 3.3 in the case of disagreement the Parties shall try to agree the Discount Statement within 14 days of the Authority informing the Service Provider that it disagrees with the Discount Statement in whole or in part.
4. Within 14 days of the Authority informing the Service Provider of the extent (if any) to which it agrees the Discount Statement, the Discount that is so agreed shall become due and payable to the Authority. If the Service Provider fails to pay such agreed Discount on time then the Service Provider will be entitled to interest on any outstanding Discount at the simple interest rate of 5% per annum above the base rate as set by the Bank of England as may be amended from time to time, from the date that payment of the Discount is due until the actual date of payment.

SCHEDULE 6C - INTRODUCTION FEE

The Introduction Fee or Temporary to Permanent Fee will be calculated by applying the Tendered Percentage Figure shown in Table 1 as Temp to Perm Fee, to the full time salary of the Temporary Worker for the first year in their new post. If the Temporary Worker has been appointed to a part time or fixed term contract the Introduction Fee will be calculated on 9/12 of the first year's pay due to the Temporary Worker.

The Introduction Fee will only be payable if the Temporary Worker is employed by the Client during which of the following period ends later:

- a) the period of 8 weeks from the day after the day on which the Temporary Worker's Assignment finished; or
- b) within 14 weeks of the first day of the Temporary Worker's Assignment (taking account of whether the period has been interrupted by a non-working period of more than 42 days in which case a new 14 weeks period starts).

SCHEDULE 6D - PAYMENT TERMS

The Group operates a "self-billing" system for the payment to agents for the services of contractors. This functions as follows:

1. The Authority or other Group Member shall submit to the Service Provider weekly electronic invoices showing the Charges payable by the relevant Group Member to the Service Provider in relation to each week of a Temporary Worker's Assignment. Weeks shall be measured as starting on a Sunday and finishing on a Saturday. Details of the Charges relating to more

than one Temporary Worker may be collated on the same invoice if convenient.

2. Each such invoice shall be accompanied by supporting details, contained in an electronic copy of the relevant timesheet, electronically approved by the Temporary Worker Recruitment Manager.
3. VAT shall be shown as a separate charge on each invoice. Other information may appear on timesheets as agreed between the Parties (for example, Temporary Worker's name, Temporary Worker's unique identifying number, week to which the invoice relates).
4. The Service Provider shall be responsible for educating the Temporary Workers about the system of electronic time sheet completion (or other system advised by the Authority).
5. Once the TfL Group Member has produced a valid invoice accompanied by a valid timesheet, the TfL Group Member shall pay this by BACS. Early payment shall attract the following rebates (which rebates include the service charge payable to the TfL Group Member for processing the invoices and timesheets):

Time of Payment (time shall start to run on the date on which the invoice is raised).

	Rebate
Within 10 days or less	██████
Within 17 days or less	██████
Within 24 days or less	██████
Greater than 24 days	██████

6. The rebates for fast payment referred to in paragraph 5 above will be invoiced by the TfL Group Member to the Service Provider on a quarterly basis, calculated on the full amount inclusive of VAT. The Service Provider shall pay rebates within 30 days of receipt of the invoice. In the event of late payment by the Service Provider, interest will be chargeable at the same rate payable by the TfL Group Member pursuant to **Clause 9.3** of the Agreement.
7. As an alternative to the procedure in paragraph 6 above, the TfL Group Member may elect to deduct the rebates referred to in paragraph 6 from the payments to the Service Provider to which they relate, or from any subsequent payment. In this case, the deduction will appear on the relevant invoice.
8. The Temporary Worker Recruitment Manager shall have no obligation to approve timesheets, which have been incorrectly completed and are therefore, invalid. The TfL Group Member shall have no obligation to raise invoices against invalid timesheets but shall assist the Temporary Worker concerned in correcting the timesheet in order to make it valid.

9. Any queries regarding invoicing should be directed to the Temporary Worker Recruitment Manager. Any queries regarding progress of payments should be directed to TfL's Accounts Payable Department or as advised by TfL from time to time.
10. To satisfy HM Customs and Excise, the Service Provider shall confirm in writing on its company letterhead that it accepts the Authority's self-billing process, in a form approved by TfL. The provision of such a letter shall be a condition precedent to the payment of the Charges.

SCHEDULE 7

Employment Provisions

For the purposes of this Schedule:

“Code” means the Code of Practice on Workforce Matters in Local Authority Service Contracts, contained in Annex C of Circular 07/2003, issued by the Office of the Deputy Prime Minister on 30 September 2003 as amended from time to time;

“Current Service Provider” means provider of services substantially similar to the Services immediately before the Services Commencement Date (which may or may not be the Authority);

“Employment Costs” means wages, holiday pay, employment benefit, costs, redundancy costs and unfair dismissal costs and awards in respect of all Transferring Staff;

“Further Transfer Date” means the date of the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Authority or any Replacement Service Provider;

“Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;

“Replacement Service Provider” means any replacement Service Provider or provider to the Authority of the Contract (or any part of it);

“Re-Transferring Personnel” means any Service Provider’s Personnel who:

- (a) will transfer to the employment of either the Authority or the Replacement Service Provider pursuant to the Regulations; or
- (b) accepts an offer of employment from the Authority or a Replacement Provider (as appropriate),

upon the expiration or termination (in whole or in part) of this Agreement;

“Statement of Practice” means the Cabinet Office’s Statement of Practice, “Staff Transfers in the Public Sector” (January 2000) as amended from time to time;

“Transfer of Provision”; means the transfer of the provision of the Services from the provision by the Current Service Provider to the provision by the Service Provider;

“Transferring Staff” means such employees as are named in an Appendix to the Contract.

PART A: Transfer of Employees to Service Provider

1. It is understood and acknowledged by the Parties that the Regulations apply to the Transfer of Provision and accordingly, pursuant to the Regulations, the contracts of employment between the Current Service Provider and the Transferring Staff will have effect from the Services Commencement Date as if originally made between the Service Provider and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be subject to the provisions of **paragraph 2**).
2. The Service Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 with effect from the Services Commencement Date.
3. The Service Provider will comply and will procure that its sub-contractors comply with the Statement of Practice and the Code.
4. All Employment Costs in respect of the period:
 - 4.1 up to the Agreement Commencement Date (whether or not due for payment at that date) will be the responsibility of the Current Service Provider; and
 - 4.2 on and after the Commencement Date will be the responsibility of the Service Provider, and will, if necessary, be apportioned on a time basis between the Current Service Provider and the Service Provider.
5. The Service Provider will indemnify, keep indemnified and hold harmless the Authority from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the Authority incurs or suffers arising out of or in connection with:
 - 5.1 any act or omission by or on behalf of the Service Provider in respect of any person employed or engaged by it including, on or after the Agreement Commencement Date, the Transferring Staff;
 - 5.2 any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission and/or, communication made to the Transferring Staff before the Agreement Commencement Date by, on behalf of and/or at the instruction of the Service Provider;
 - 5.3 any failure by the Service Provider to provide sufficient information to the Current Service Provider to enable it to comply with its information and consultation obligations under the Regulations;
 - 5.4 the employment or termination of employment by the Service Provider of any Transferring Staff (whether or not terminated by notice and, if so terminated, whenever that notice expires) on or from the Agreement Commencement Date; and/or
 - 5.5 any actual, proposed or anticipated changes made by the Service Provider to the terms and conditions of employment of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

6. The Service Provider will provide the Current Service Provider, as soon as practicable, but in any event in good time before the Agreement Commencement Date with all information which the Current Service Provider may reasonably require to enable it to comply with its information and consultation obligations under the Regulations.
7. The Service Provider warrants and undertakes to the Authority that all information given to the Authority regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.
8. Promptly when requested by the Authority (but not more than twice in any year) and not more than seven (7) days after the date of any notice to terminate this Agreement given by either party for any reason whatsoever, provide and use its best endeavours to procure that any relevant subcontractor provides the following information to the Authority:
 - 8.1 a list of current Service Provider's Personnel and subcontractors (each identified as such in the list) (the "**Staff List**");
 - 8.2 all material terms and conditions relating to the employment or engagement of the persons listed on the Staff List;
 - 8.3 written job descriptions of the persons listed on the Staff List;
 - 8.4 all other information which the Service Provider or subcontractors know or ought to know about its or their rights, powers, duties and liabilities under or in connection with the contracts of employment of the persons listed on the Staff List including without limitation their job titles, grades or seniority, dates of commencement of continuous employment, remuneration (salary and benefits) and pension rights; and
 - 8.5 in the situation where notice to terminate this Agreement has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Contract, whom the Service Provider considers will not transfer under the Regulations for any reason whatsoever together with details of their role and a full explanation of why the Service Provider thinks such persons will not transfer, such information together being the "**Staffing Information**".
9. The Service Provider will notify the Authority in as much detail as possible as soon as practicable and in any event within five (5) days of the Service Provider becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
10. The Service Provider warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
11. Subject to **paragraph 12** below, the Service Provider will provide the Authority with a final Staff List (the "**Final Staff List**") not less than fourteen (14) days before the date of expiry or earlier termination of the Contract.
12. If the Contract is terminated by the Authority or the Client in accordance with **Clause 37** then the Final Staff List will be provided by the Service Provider to the Authority within fourteen (14) days of the date of termination of the Contract.
13. The Service Provider warrants that as at the date of expiry or earlier termination of the Contract:
 - 13.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;

- 13.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
- 13.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority.
14. From the earlier of:
- 14.1 the date falling six (6) calendar months before the date of expiry of the Contract; or
- 14.2 if the Contract is terminated by the Authority or the Client in accordance with **Clause 37**, the date of the relevant termination notice
the Service Provider will not and will procure that its Subcontractors do not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 14.3 terminate or give notice to terminate the employment or engagement, or replace the persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
- 14.4 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
- 14.5 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
- 14.6 increase or decrease to any significant degree the proportion of working time spent on the Services by any person on the Final Staff List or any Re-transferring Personnel; or
- 14.7 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List.
15. The Service Provider will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in **paragraph 14** regardless of when such notice takes effect.
16. For the avoidance of doubt, the Service Provider confirms that the Authority will be permitted to disclose any information provided to it under Part A of this Schedule in summary form to any person who has been invited to tender for the provision of the Services (or similar services) and to any Replacement Service Provider.

PART B TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION

1. If the Regulations apply on the expiration or termination of the Contract and/or the appointment of a Replacement Service Provider the following will apply:

1.1 the contracts of employment of each member of the Re-Transferring Personnel will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which [will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005]) – OR - [will be subject to the provisions of clause [] from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Authority or Replacement Service Provider (as appropriate).

1.2 During the period commencing on the earlier of:

1.2.1 the date falling six (6) calendar months before the Further Transfer Date;
or

1.2.2 if the Agreement or the Contract is terminated by the Authority or the Client in accordance with **Clause 37**, the date of the relevant termination notice,

and ending on the Further Transfer Date the Service Provider will:

1.2.3 provide the Authority with access to such employment records as the Authority may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate);

1.2.4 allow the Authority to have copies of any of the documents referred to in this Schedule; and

1.2.5 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate).

If the Re-Transferring Personnel are employed or engaged by sub-contractors, the Service Provider will procure such sub-contractors provide the Authority or Replacement Service Provider (as appropriate) with the same level of access and information.

1.3 The Service Provider warrants to each of the Authority and the Replacement Service Provider (as applicable) that as at the Further Transfer Date no Re-Transferring

Personnel (except where the Service Provider has notified the Authority and the Replacement Service Provider (if appointed) in writing to the contrary) to the Service Provider's knowledge:

- 1.3.1 is under notice of termination;
- 1.3.2 is on long-term sick leave;
- 1.3.3 is on maternity, parental or adoption leave;
- 1.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
- 1.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Replacement Service Provider (as appropriate);
- 1.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;
- 1.3.7 has received a written warning (other than a warning that has lapsed);
- 1.3.8 has taken or been the subject of a grievance procedure within the previous two (2) years; or
- 1.3.9 has objected, or has indicated an intention to object, in accordance with the Regulations to his or her employment transferring to the Authority or Replacement Service Provider (as appropriate) under the Regulations.

1.4 The Service Provider undertakes to each of the Authority and any Replacement Service Provider (as appropriate):

- 1.4.1 that it will continue to perform and observe all of its obligations and those of any of its predecessors under or in connection with the contracts of employment of the Re-Transferring Personnel up to the Further Transfer Date;
- 1.4.2 to pay to the Re-Transferring Personnel all sums to which they are entitled from the Service Provider and/or any sub-Contractor up to the Further Transfer Date (regardless of when such sums fall due) including, without limitation, all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the Further Transfer Date; and

1.4.3 to comply in all respects with its information and consultation obligations under the Regulations and to provide to the Authority or Replacement Service Provider (as appropriate) such information as the Authority or Replacement Service Provider may request in order to verify such compliance.

1.5 In respect of the Re-Transferring Personnel the parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

1.5.1 up to and including the Further Transfer Date the Service Provider will be responsible for the Employment Costs;

1.5.2 after the Further Transfer Date the Authority and/or Replacement Service Provider (as appropriate) will be responsible for the Employment Costs,

except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.

1.6 The Service Provider will indemnify, keep indemnified and hold harmless each of the Authority and any Replacement Service Provider from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the Authority and/or the Replacement Service Provider (as appropriate) incurs or suffers arising directly or indirectly out of or in connection with:

1.6.1 any failure by the Service Provider to comply with its obligations under Part B of this Schedule;

1.6.2 any act or omission by or on behalf of the Service Provider in respect of any person who is or was employed or engaged by it, except in the case of the Re-Transferring Personnel where the Service Provider's indemnity will only apply in respect of such employees insofar as and to the extent that any such act or omission occurred on or before the Further Transfer Date or was undertaken by, on behalf or at the instruction of the Service Provider; and/or

1.6.3 any claim or demand or other action taken against the Authority and/or Replacement Service Provider by any person employed or engaged by the Service Provider (other than Re-Transferring Personnel) who claims

(whether correctly or not) that the Authority or Replacement Service Provider has inherited any liability from the Service Provider in respect of them by virtue of the Regulations.

1.7 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Agreement and for six (6) years following the date of expiry or earlier termination of the Contract the Authority will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

1.7.1 is still an employee or sub-contractor of the Service Provider or any of the Service Provider's associated companies; and

1.7.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under this Agreement,

and such access and consultation will be provided free of charge and thereafter be charged at reasonable rates for the time spent by the Service Provider and/or its employees or sub-contractors on such consultation. The Service Provider will further procure that all such persons co-operate with the Authority's requests.

1.8 The Authority and the Service Provider agree that it is intended that the benefit of **paragraphs 1.3, 1.4 and 1.6** of this **Part B** of **Schedule 7** shall in the Authority's discretion be assigned or and/or assumed by the Replacement Service Provider and the Service Provider agrees to do all things (including executing documents) necessary to give effect to such assignment or assumption.

SCHEDULE 8

Diversity, Equality and Employment

1. Introduction

1.1 Without prejudice to the other provisions in this Agreement relating to the Service Providers Personnel, this Schedule 8 sets out the Service Provider's obligations in respect of:

1.1.1 supporting the Authority in meeting its positive legal duty to pay due regard to the need to eliminate discrimination and to promote equality of opportunity and good relations in carrying out its functions, including those delivered on its behalf by an external Service Provider.

1.1.2 supporting the Authority in the implementation of the Skills and Employment Strategy; and

1.1.3 ensuring that the Service Provider attracts a diverse pool of temporary candidates with the skills required by the Authority throughout the term of the Agreement and any extended term.

1.2 In this Schedule 8, the following terms shall have the corresponding meanings:

“Agreed DEEP Plan”	means the Service Provider's diversity, equality and employment plan set out at Appendix 2 (<i>Initial/Agreed DEEP Plan</i>) to this Schedule 8, to be prepared in accordance with the DEEP Plan Template and Approved by the Authority;
“Initial DEEP Plan”	means the initial diversity equality and employment plan set out at Appendix 2 (<i>Initial/Agreed DEEP Plan</i>), submitted by the Service Provider prior to the Start Date and to be agreed between the Parties in accordance with paragraph 2 of this Schedule 8;
“Monthly DEEP Monitoring Report”	means the report to be prepared by the Service Provider in the form set out at Appendix 3 (<i>Monthly DEEP Monitoring Report Template</i>) and submitted to the Authority in accordance with the provisions of paragraph 5 of this Schedule 8;
“Relevant Employment Vacancy”	means an employment vacancy notified to the Service Provider by a Temporary Worker Recruitment Manager from the Authority;
“Skills and Employment Strategy”	means the Authority's ten (10) year skills and employment strategy, as amended from time to time. A copy of the Skills and Employment Strategy dated October 2008 is provided at Appendix 1 (<i>Skills and Employment Strategy</i>) to this Schedule 8;
“DEEP Co-ordinator”	has the meaning set out in paragraph 3.1 of this Schedule 8;

“DEEP Infraction”	means any breach by the Service Provider of any of its obligations under this Schedule 8;
“DEEP Plan Template”	means the template for the DEEP Plan set out at Appendix 2 (<i>DEEP Template</i>) to this Schedule 8, to be completed by the Service Provider;
“Diversity Works for London”	means the programme delivered by the London Development Agency to help businesses implement diversity in the workplace.
“Gold Standard”	The Gold Standard is the Diversity Works for London accreditation for businesses achieving the highest level of the online diversity toolkit.

2. **Agreed DEEP Plan**

2.1 Based on the Initial DEEP Plan, the Service Provider shall:

2.1.1 further develop the Initial DEEP Plan to reflect the comments and requirements of the Authority; and

2.1.2 submit a revised copy of the Initial DEEP Plan to the Authority for Approval within twenty (20) Working Days of the Agreement Commencement Date.

2.2 If the Initial DEEP Plan is:

2.2.1 approved, it shall be adopted immediately and become the Agreed DEEP Plan; or

2.2.2 not approved, the Service Provider shall amend the Initial DEEP Plan and re-submit it to TfL for approval within the time period agreed in writing between the Parties. If the Authority do not approve the Initial DEEP Plan following its resubmission, the matters preventing such approval shall be resolved in accordance with the Procedure in Scheme 10 of Dispute Resolution,

2.3 Without limiting any other provision of this Agreement, the Service Provider shall:

2.3.1 comply with provisions of the Agreed DEEP Plan; and

2.3.2 at no additional cost to the Authority and subject to the provisions of paragraph 2.4 below, review and amend the Agreed DEEP Plan:

- 2.3.2.1 three (3) Months prior to the Agreement Commencement Date; and
 - 2.3.2.2 annually not later than each anniversary of the Agreement Commencement Date or at such other times requested by the Authority, to reflect:
 - 2.3.2.3 good industry practice;
 - 2.3.2.4 any changes to the nature of the Services; and
 - 2.3.2.5 any amendments proposed by the Service Provider or the Authority.
- 2.4 Any changes or amendments to the Agreed DEEP Plan shall be subject to Clause 43 of the Agreement and shall not be implemented until approved by the Authority.

3. **DEEP Co-ordinator**

- 3.1 Within twenty (20) Working Days of the Agreement Commencement Date, the Service Provider shall nominate a member of Service Provider's Personnel with the necessary skills and authority to be the DEEP Co-ordinator to:
- 3.1.1 be responsible for the implementation and on-going development and maintenance of the Agreed DEEP Plan; and
 - 3.1.2 act as the single point of contact between the Authority nominated personnel on all matters concerning the Agreed DEEP Plan.

4. **Local Community Relations**

- 4.1 The Service Provider acknowledges and accepts that members of the TfL Group work closely with the Authority and Third Party organisations to implement the Skills and Employment Strategy.
- 4.2 Accordingly, the Service Provider shall:

4.2.1 at the time of placing an advertisement for a Relevant Employment Vacancy, notify the relevant member of the Authority personnel (and/or any third parties nominated by the Authority) of such advertisement, providing details of the:

4.2.1.1 relevant employment vacancy;

4.2.1.2 date of the advertisement; and

4.2.1.3 publication in which the advertisement is scheduled to appear or appeared (as applicable); and

4.2.2 attend a maximum of two (2) events each year, at a time and location specified by the Authority, to publicise employment and training opportunities arising from the provision of the Services.

5. **Monitoring and Reporting**

The Service Provider shall provide the Authority periodically with a Monthly DEEP Monitoring Report [as set out in the, Contract Requirements], detailing the Service Provider's performance against the Agreed DEEP Plan.

6. **Diversity Works for London**

6.1 The Service provider shall register with the Diversity Works for London programme within thirty working days of the Agreement Commencement Date.

6.2 The Service Provider shall complete the Diversity Works for London diagnostic tool within three months of the Agreement Commencement Date.

6.3 The Service Provider shall commit to achieving the Gold Standard before the second anniversary of the Agreement Commencement Date.

APPENDIX 1 TO SCHEDULE 8

Skills and Employment Strategy

A copy of the Skills and Employment Strategy can be obtained from:

<http://www.tfl.gov.uk/assets/downloads/corporate/Skills-and-employment-strategy-march09.pdf>

APPENDIX 2 TO SCHEDULE 8
DEEP Template

The following DEEP Plan shall be reviewed by the Authority and developed where appropriate with the Service Provider.

Initial Diversity, Equality and Employment (DEEP) Delivery Plan

Title: Delivery Against the Authority's Priorities

Content: (Max 500 words)

Describe the steps that will be taken to ensure that temporary work opportunities arising from the contract are made available to all of London's diverse communities. Responses should reflect the level of opportunity with the categories of worker you supply and include:

- How you will promote registration for temporary work with the Authority to London's diverse communities;
- How you will ensure the Authority's representative (or any third party nominated by the Authority) is notified of a Relevant Temporary Employment Vacancy at the time of placing an advertisement;
- Any links you will establish with employment agencies and unemployment programmes so that, as temporary vacancies arise, the long-term unemployed and Londoners from diverse communities are targeted and made aware of these opportunities.
- How you will actively address issues of under representation in the categories your organisation services, for example of women in engineering.

MI will promote registration for temporary work with TfL to diverse communities by utilising existing candidate attraction techniques, which will be targeted towards a diverse range of specific groups covering the six diversity strands. Examples of this include:

- Ethnicity: advertising on major job sites, conducting targeted awareness campaigns, advertising on ethnicjobsite.co.uk
- Gender: MI will use the most popular engineering job sites and targeted awareness campaigns
- Disability: advertising on youreable.com and jobability.com. MI is also aiming to become a 'two ticks' employer through the 'employability' initiative
- Religious Belief: use of popular jobsites plus targeted awareness campaigns
- Age: Participation in the 'Back Young Britain' campaign. MI will also make apprenticeships and training opportunities available to all age ranges and will target more mature professionals through wrinkles.org

- Sexual Orientation: MI will advertise on major jobsites and on jobs.pinknews.co.uk

MI will also utilise thediversitygroup.co.uk and will manage the recruitment process through 'Relay Jobs London'.

MI will utilise its e-recruitment system 'Talisman' to ensure the authority's representative is notified of a relevant temporary employment vacancy. 'Talisman' automatically posts vacancies onto www.morson.com. Recruiters can also log the placement of an advert on a specific client record. 'Talisman' can be configured to email a particular authority contact automatically at the time of placing an advertisement.

As an established recruiter within London, within the public sector and within the Rail industry, MI is already involved with a number of unemployment programmes and is currently developing links with further employment initiatives. Current involvement includes:

- LDA – Training and employment offered in conjunction with 'Set Solutions'
- DWP – giving groups seminars to newly unemployed professionals offering CV and interview advice
- Job Centre Plus – placing long term unemployed in work for a minimum of 26 weeks
- DWfL – attaining the 'Gold Standard'

Initiatives aiming to be involved with:

- 'Back Young Britain' campaign
- Employability

MI will actively address issues of under-representation by implementing awareness campaigns. These will involve:

- Going into schools targeting diversity strands (i.e. all girls' schools, religious schools and schools with a high number of ethnic minority students) to promote the opportunities available within commercial careers.
- Targeted recruitment campaigns
- Attending recruitment fairs aimed at specific diversity strands (examples include: 'Positive about Employment Recruitment Fair' (the Diversity Group))
- Funding training and degree education

Title: Diversity Works for London

Content: (Max 250 words)

Describe the steps that will be taken to ensure that temporary work opportunities arising from the contract are made available to all of London's diverse communities. Responses should reflect the level of opportunity with the categories of worker you supply and include:

- Your timescale for completing the DWfL self-assessment tools
- Your target date for achieving the Gold Standard
- Management actions you will put in place to ensure the Gold Standard is achieved within your target date

MI has completed the Self Assessment questionnaire which has highlighted areas of MI's processes which need improvement. This feedback has been built into an action plan which has been approved by MI's Operations Board.

Once MI moves into its new Head Office in Salford, MI's HR and Quality Assurance managers will be located in the same building enabling a full integration of HR and Quality Assurance processes which will enable MI to further monitor diversity and to implement processes designed to improve diversity. MI therefore expects to complete the Diversity Standard by December 2010.

MI will monitor progress on the attainment of this standard and report monthly to the operations board. This is in line with MI's ethic of continuous improvement and, should the board decide that an action is not being implemented effectively, MI will alter the action to ensure success. Planned action include:

- Establish a diversity forum
- Review and improvement of Equality Opportunities policy
- Configuring 'Talisman' to monitor diversity of temporary workers
- Targeted awareness campaigns
- Apprenticeships for specific ethnic strands
- HR Manager to attend diversity training sessions and establish internal diversity training sessions
- Monitor Supplier Audit results more thoroughly to determine diversity of supply chain
- Include diversity monitoring in monthly Ops reports
- Inclusion of diversity section within client and candidate perception surveys

Title: SLNT Monitoring & Co-ordination

Content: (Max 250 words)

- Describe who will be responsible for implementing, managing and reporting DEEP activity within your company:
- What are the administrative and management arrangements that will be operated in relation to your DEEP activity?
- How will the proposed role/ structure interact with the Authority?

The person responsible for implementing, managing and reporting DEEP activity within the company will be HR Manager Becki Ross although ultimate responsibility will lie with Business Development Director Paul Moogan with whom Becki is spearheading the campaign. In addition, the TfL Account Manager Jason Kerr, Recruitment Manager Neil Drummond and CRM Support Mark Smith will be local points of contact for the monitoring of the DEEP in London.

There are several administrative and management arrangements to be put into place for the increased Diversity management planned by MI. These include:

- Formal notice to be sent out by CEO Ged Mason regarding the DEEP and its importance to the company and to the TfL contract
- Configuring Talisman to include increased diversity statistics monitoring
- Inserting a diversity monitoring and suggestions section into monthly Ops Board reports

HR Manager Becki Ross will be responsible for overseeing the DEEP implementation and for ensuring all company wide initiatives are carried through (e.g. updating Talisman, sending out notification emails). London contacts on the TfL account management team i.e. Account Manager Jason Kerr, Recruitment Manager Neil Drummond and CRM Support Mark Smith will be TfL's local points of contact. They will report to Becki on the progression of the DEEP in London and she will compile a report which can be included in the Management Information Report distributed to TfL on a monthly basis. CRM Support Mark Smith will be the main point of contact for TfL regarding the DEEP.

Title: DEEP Implementation Arrangements

Content: (Max 250 words)

What arrangements you will put in place to put the plan into action during contract implementation including:

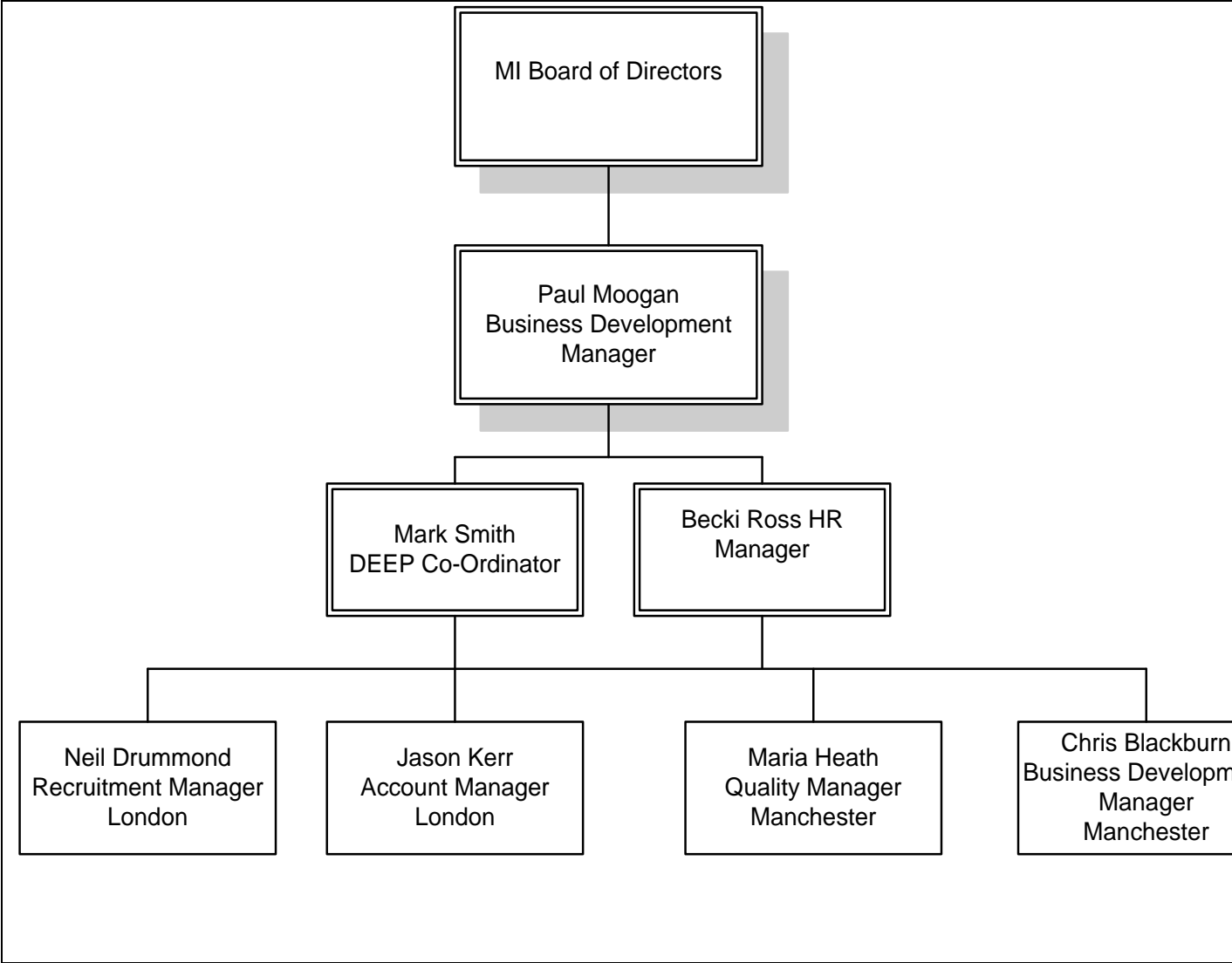
- The transfer of knowledge from bid team to the project team
- Engagement with TfL to develop the agreed DEEP Delivery Plan
- Appointment of the DEEP Co-ordinator and establishment of the required administration, management and reporting structures

Business Development Director Paul Moogan will act as a liaison between the Bid Team and the Project Team to ensure transfer of knowledge. Paul will be instrumental in both the management of the bid document and the implementation of the contract and therefore have a strong knowledge of both areas, ensuring seamless transference of knowledge throughout.

MI will engage with TfL's Supplier Skills Managers to develop the agreed DEEP Delivery plan. Mark Smith will be the 'DEEP' Co-ordinator with Becki Ross managing attainment of the DWfL 'Gold Standard' and the diversity plan across the Group. Mark Smith will create an action plan with TfL based around the actions already approved by MI's Operations Board. MI will welcome any input from TfL in terms of expanding on actions already approved or changing the direction of ideas to fit more closely with TfL requirements.

Mark Smith will be the DEEP Co-ordinator and will manage the implementation and coordination of the DEEP.

- Administrative requirements: Mark will be in charge of all administrative requirements from London including the issuance of notices, letters, emails and newsletters
- Reporting Structure: Mark will report into Paul regarding the progression of the DEEP but will liaise with Becki Ross in terms of how the implementation can work and the best plan going forward. Mark will create reports which he will give to Becki to compile with the Diversity section of the Ops Report.
- Management requirements: Mark will liaise between Jason Kerr and Neil Drummond in London and Paul Moogan and Becki Ross in Manchester. The account structure for the implementation and management of the DEEP will be as follows:



APPENDIX 3 TO SCHEDULE 8
Monthly DEEP Monitoring Template

SCHEDULE 9

Disaster Recovery

The Disaster Recovery Plan shall be submitted by the Service Provider and reviewed and agreed by the Authority within 3 months of the Commencement Date of the Agreement.

SCHEDULE 10

Dispute Resolution

1. The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement (“Dispute”) before resorting to litigation.
2. If the Dispute is not settled through discussion between the Temporary Worker Recruitment Manager and a representative of the Service Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“Senior Personnel”) of each of the Parties for resolution.
3. If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party (“Notice”) that a structured mediation or negotiation be entered into with the assistance of a mediator.
4. If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution (“CEDR”) in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
5. Where a dispute is referred to mediation under **paragraph 3** above, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
6. If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties’ authorised representatives, shall be final and binding on the Parties.
7. If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within forty (40) Business Days of the service of the Notice either Party may commence proceedings in accordance with **Clause 51**.
8. For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with this Agreement and without delay or disruption while the Dispute is being resolved pursuant to this **Schedule 10**.
9. Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Schedule and this Schedule shall not apply in respect of any circumstances where such remedies are sought.

SCHEDULE 11

Exit Strategy

Exit Plan

Scope

In accordance with clause 37 of the Agreement, this Schedule sets out each Party's obligations in the event of termination or expiry of the Agreement. The purpose of this schedule is to provide both parties with a guide on the joint action to be taken in the event of a planned or unplanned exit from the Agreement. Each Party should conduct its obligations under this Schedule with a view to ensuring minimal disruption to the ongoing business.

1. Exit Plan Approvals Process

Role	Signature	Date
<i>[Insert title of relevant individuals (from Customer and Service Provider), e.g. account director/manager, risk manager, business owner, etc.]</i>		

2. Exit Strategy Document Review Dates

This document should be reviewed as part of the service management activity prior to the commencement of this agreement and at least [6] monthly thereafter. Any proposed changes to this document will be discussed and agreed by both Parties.

3. Types of Exit

For the purposes of this Schedule there are two types of exit:

(A) Planned Exit

Planned exits are where both parties expect the exit at a particular point in time. This effectively equates to the point of completing the envisaged term.

(B) Unplanned Exit

This refers to a termination of the contract prior to its full term. Unplanned exits tend to be more difficult and could require the exit process to be completed in tighter timescales than those under a planned exit. Maintaining SLAs, regulatory requirements and customer expectations in conjunction with brand principles would be important considerations during an unplanned exit.

4. Exit Management Process

4.1 Set up an Exit Management Team

A joint Exit Management Team will be established, led by an Exit Project Manager appointed through procedures agreed between both parties. The joint Exit Management Team will manage the exit process and seek to agree a detailed and updated Exit Plan. Key set up activities will include:

- Agreeing a timetable and allocation of responsibilities

- Confirm contractual obligations of both Parties
- Establishing governance requirements
- Establishing reporting line and requirements
- Creating appropriate business briefs and securing funding as appropriate
- Developing and delivering appropriate exit plans that minimise disruption to both parties
- Continually reviewing the business requirements of the exit programme and updating as appropriate

4.2 Useful documents

Useful documents for the Exit Management Team include:

- a copy of this agreement;
- minutes of any service review meetings that are held between the Parties; and
- management information results and/or reports for up to 12 months before the exit.

4.3 Roles and Responsibilities

Title	Exit Responsibilities
Key Business Owner/Sponsor	<ul style="list-style-type: none"> • Overall responsibility for delivering the exit programme • Accountable for decision to exit • Responsible for ensuring budget agreed for exit programme
Joint Exit Management Board to include: <ul style="list-style-type: none"> • Each Party's business sponsor • Exit project manager • Relevant business area representatives 	<ul style="list-style-type: none"> • Forum for raising issues by representative of both parties • Resolution of escalated issues • Management of risk • Ensure regulatory compliance

Title	Exit Responsibilities
Exit Project Manager	<ul style="list-style-type: none"> • Preparing and Managing the overall Exit Plan and ensuring that all agreed workstreams work effectively • Accountable for the successful delivery of all of the components of the exit programme, on time, within budget and to the required level of quality with no loss of operational services or service quality • Management of the programme risks, issues and escalation • Reporting to the Programme Board and/or Sponsor at regular intervals
Workstream Managers	<ul style="list-style-type: none"> • Overall responsibility to deliver individual workstreams of Exit Programme • Ensuring that all workstreams communicate appropriately throughout the programme • Reporting progress, issues and risks to the Project Manager
Workstream Team	<ul style="list-style-type: none"> • Conduct the project work assigned within each workstream • Report to the Workstream Manager regularly with progress and issues
Customer Commercial Director	<ul style="list-style-type: none"> • Manage the relationship between Customer and the Service Provider up to and following the Termination date
Customer Account Director	<ul style="list-style-type: none"> • Ensure the appropriate levels of service are delivered to the Service Provider at a higher level up to and following the Termination Date
Communications Team	<ul style="list-style-type: none"> • Responsibility for communication plan

5. Exit Management Tasks

There are a number of tasks and activities to be completed in the course of termination of the Agreement and these are listed below. These tasks will be developed in the light of specific requirements.

Obligations	Date on which service to be completed/ period during which relevant transitional service is to be provided	Responsibility <i>[i.e. Customer and/or Service Provider]</i>
Processing of existing business/business as	•	•

Obligations	Date on which service to be completed/ period during which relevant transitional service is to be provided	Responsibility <i>[i.e. Customer and/or Service Provider]</i>
usual including maintenance of business continuity plan		
Project Management – Appoint Project Manager and agree resource	●	●
-Provide information regarding the Services as requested by TfL -Provide information regarding Transfer Regulations as requested by TfL or a replacement Service Provider	●	●
Comply with obligations regarding Staff Transfer as set out under Part B of Schedule 7 Employment Provisions, of the Agreement	●	●
Return of documentation	●	●
Payment of outstanding invoices	●	●
Return of TfL Data	●	●
Post termination communication	●	●
Communication Plan	●	●